RECORD, CASE No. 13,458.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM NO., 305.

R. E. ALLEN, APPELLANT,

vs.

WILLIAM H. GAINES AND MARIA GAINES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

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1 Be it remembered that on the 23rd day of May, 1884, came into the office of the clerk of the circuit court of the United States for the eastern district of Arkansas William H. Gaines and Maria Gaines, his wife, by M. W. Benjamin and R. G. Davies, Esqs., their solicitors, and filed therein their bill of complaint against R. E. Allen *et al.*, on the chancery side of said court; which bill of complaint is as follows:

United States Circuit Court, Eastern District of Arkansas, October Term Thereof, 1884.

WILLIAM H. GAINES and MARIA GAINES, His Wife,
vs.
R. E. ALLEN, A. J. FIFE, and R. A. HOUSTON.

William H. Gaines and Maria Gaines, his wife, bring this suit against R. E. Allen, A. J. Fife, and R. A. Houston, and for cause of action allege that in the year 1851, in pursuance of the instruction of the Secretary of the Interior, plaintiff Maria Gaines, Albert Belding, Henry Belding, and George Belding, heirs and legal represen-
2 tatives of Ludovicus Belding, entered, under the pre-emption laws of the United States, the southwest quarter of section thirty-three, in township two (2) south, range nineteen (19) west, for which they paid the United States Government two hundred dollars, which was advanced and paid by plaintiff Wm. H. Gaines, and which money the United States still retains. At the time of said entry a small portion of said land was occupied by Mrs. Lydia Belding, widow of Ludovicus Belding, and the portion of said lands for which this suit is brought was occupied by Jacob Sweepster, and in — Wm. H. Gaines, Maria Gaines, Albert Belding, Henry Belding, and George Belding, under the supervision and control of Wm. H. Gaines, brought suit in the Hot Springs circuit court against Jacob Sweepster and recovered judgment for the possession of said land, which judgment was afterwards affirmed by the supreme court of the State of Arkansas and by the Supreme Court of the United States, and on the — day of ——, 1856, Wm. H. Gaines was, by the sheriff
3 of Hot Springs county, put into the possession of said property by virtue of a writ of possession issued upon the judgment of said Hot Springs circuit court in obedience to the mandates of said supreme courts, both of the State and of the United States, and said plaintiffs, Wm. H. Gaines and Maria Gaines, his wife, remained in peaceable and quiet possession of said property until the first day of June, 1876, when they were dispossessed of said property by a receiver appointed by the Court of Claims of the United States under an act of Congress entitled "An act in relation to the Hot Springs reservation, in Arkansas," approved June 11, 1870.

Plaintiffs entered into possession by virtue of said entry and by virtue of the decisions of said State and United States supreme courts and the writs of possession issued in pursuance of said judgments, and continued in possession for a period of about twenty years, until

the Supreme Court of the United States, in a suit to deter-
4 mine to whom the patent should issue, decided that said lands were not subject to pre-emption or entry, and that no claimant was entitled to a patent, but the same was still the property of the United States, which decision was rendered April 24th, 1876.

Plaintiffs during said twenty years paid taxes on said property and fenced and built houses on the same and otherwise improved the same. On the 5th day of November, 1874, plaintiff Wm. H. Gaines leased a lot of ground, which has since been laid off into lots and blocks by the Hot Springs Commission in pursuance of an act of Congress and is now known as lot five (5), in block (129) one hundred and twenty-nine, to A. J. Fife and R. A. Houston, which lease was for the term of one year, to be renewed at the election of the lessee from year to year until the title to the Hot Springs quarter section of land was settled, for an annual rent of ($300.00) three hundred dollars per annum, payable in monthly installments of —.

5 Said lease also provided that all buildings and improvements erected on said lot by the lessee might be removed therefrom during the continuance of the lease or within thirty days thereafter, but that no buildings or improvements erected could be removed while said rent or any part thereof remained due and unpaid. It also provided that the lessor should have a lien on all buildings and improvements to secure the rent, a copy of which is hereto attached in Exhibit "A" and made a part hereof. Said lessees took possession of said land under and by virtue of said lease only, and in no other way whatever, and he, —— ——, and — assigns occupied the same under said lease until the first day of June, 1876; that on the 24th day of April, 1876, said lessees and their assigns owed the lessor for rent the sum of sixty-eight dollars and eighty-five cents—$68.85.

Said lessees and their assigns failed to remove said buildings and improvements erected by them at any time during or within
6 thirty days after the expiration of the lease, and by virtue of the provisions of the lease said buildings and improvements erected by said lessee- and their assigns became the buildings and improvements of Wm. H. Gaines.

That in the year 187– said lessee, A. J. Fife, sold and transferred to R. E. Allen all — right, title, and claim to said premises, he well knowing before said transfer all the terms and conditions of said lease, which transfer was made without the knowledge or consent of the plaintiff, which transfer was long after the 24 day of April, 1876, and gave defendant Allen no right, under the laws of the United States, to become the purchaser of said lot.

Plaintiffs, by arrangement with George, Henry, and Albert Belding, having become the owner- of said claim, aver that in less than six calendar months after the first sitting of the Hot Springs Commission, under the act of Congress of the United States entitled "An act in relation to the Hot Springs reservation, in the State of Ar-
7 kansas," approved March 3, 1877, they filed their claim before said commission to purchase said lots, and that R. E. Allen filed a like claim, and that upon the hearing of said claims they

were consolidated by said commission for the purpose of hearing the testimony; and said petitions filed and the testimony taken before said commission clearly show that —— —— had acquired his possession in no other way but by said lease made by plaintiff Wm. H. Gaines to said A. J. Fife and R. H. Houston, and that said Allen had purchased after the 24th day of April, 1876, as will more fully appear from a complete copy of the petition, testimony, and record entries in said claims filed herewith and marked Exhibit "A" and made part hereof; and notwithstanding that said petition and testimony showed that defendant R. E. Allen acquired possession only by virtue of said lease, and that his purchase was after April 24th, 1876, still said commission misconstrued the law applicable
8 to that state of facts and awarded the right to purchase said lots to defendant R. E. Allen, and since said award said defendant has purchased said lots from the United States and received a patent therefor, and on account of said misconstruction of the law as applied to the facts before said commission the right to purchase said lots, which in law, equity, and good conscience should have been awarded to plaintiffs, was by said misconstruction of the law illegally and wrongfully awarded to defendant R. E. Allen by said Hot Springs Commission.

Plaintiffs aver that, as defendants have never had any other right or title to said lots or to the possession thereof than that which they derived from said lease and under covenants to restore possession to plaintiff Wm. H. Gaines, that said defendants should be held to hold said lots as trustee- for the use and benefit of plaintiffs.

Plaintiffs offer to pay any sum of money that may be found due to the defendants or either of them by reason of any money
9 paid to the United States for the purchase of said lots, and to do all other acts which may be found to be just and equitable.

Plaintiffs aver the property herein sued for is worth more than five hundred dollars, and that this cause of action arises wholly under the law of the United States.

Plaintiffs ask that defendants be required to answer, but not under oath; and they pray that an account may be taken of the state of accounts between themselves or either of them and said defendants severally; that they may be allowed reasonable rents for the occupancy of the said premises; that said defendants may be decreed to hold said lots as trustees for the plaintiffs and to convey the same to the plaintiffs, and that they have such other relief as may be equitable.

M. W. BENJAMIN,
R. G. DAVIES, *Sol's.*

Good for costs.
M. W. BENJAMIN.

(Endorsed:) Filed and writ issued May 23rd, 1884. Ralph L. Goodrich, clerk, by W. P. Feild, D. C.

10 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 14th day of April, anno Domini one thousand eight hundred and eighty-four, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit:

On July 7, 1884:
Comes the defendant, R. E. Allen, by George W. Murphy, Esq., his solicitor, and enters herein his appearance.

And on September 1st, 1884, the following proceedings were had, to wit:
Comes the defendant, R. E. Allen, by George W. Murphy, Esq., his solicitor, and on his motion leave is granted said defendant sixty days in which to file his answer.

11 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 27th day of October, anno Domini one thousand eight hundred and eighty-four, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit:

On October 29, 1884:
Come- the defendants, by W. G. Murphy, Esq., *their* solicitor, and on his motion it is ordered that he have leave until the first of December next to file answer.

And on December 1st, 1884, the following proceedings were had, to wit:
The plaintiffs, by M. W. Benjamin, Esq., their solicitor, ask leave to amend their complaint by interlineation, which is granted, and thereupon said amendments are made.

And on December 6th, 1884, the following proceedings were had, to wit:

12 Comes the defendant, R. E. Allen, by G. W. Murphy, Esq., his solicitor, and files herein his answer; which answer of R. E. Allen is as follows:

United States Circuit Court, Eastern District of Arkansas.

WM. H. GAINES & MARIA GAINES
vs.
R. E. ALLEN, A. J. FIFE, and R. A. HOUSTON.

The separate answer of R. E. Allen, one of the defendants, to the bill of complaint of the plaintiffs, William Gaines and Maria Gaines, against him and A. J. Fife and R. A. Houston.

This defendant, saving and reserving all manner of exception and advantage to the many errors and insufficiencies of the bill of complaint, for answer thereto and to such parts thereof as are material, says that the allegations thereof to the effect that plaintiff Maria —
and Albert Belding, Henry Belding, and George Belding,
13 heirs of Ludovicus Belding, in the year 1851, under the pre-emption law of the United States, entered the southwest quarter of section thirty-three, township two south, range nineteen west; that plaintiff William H. was put in possession of it in 1856 by the sheriff of Hot Springs county; that they entered into possession of it; that they remained in possession of it; that they paid taxes on it; that they paid the United States $200.00 for it; that they recovered judgment for it; that they fenced it; that they built houses upon it; that they improved it; that defendant failed to move the improvements; that the buildings and improvements on the land sued for in this action became the property of William H.; that this defendant's claim to said land accrued after the 24th of April, 1876; that the testimony taken before the Hot Springs commissioners showed that he purchased from defendants Houston and wife after said date; that he acquired possession by purchase
14 after said date; that said lot should have been awarded to plaintiffs; that the award of the right to purchase it from the United States to this defendant was wrongful; that said commissioners misconstrued the law applicable to the evidence; that the improvements upon said land became forfeited to the plaintiffs, are all false.

As to the alleged entry and judgment this defendant says that plaintiff Maria, Henry, Albert, and George had, as they well knew when they made the application to enter said southwest quarter, no right to enter it; that the only possession they or their alleged ancestors had ever had on it was as tenants of John Penciful and those claiming under him, and that said land was not subject to entry; that they, nevertheless, by persistent efforts and by promising that they would never demand a patent for said quarter section, procured
a fraudulent writing in the form of a certificate of entry of
15 said quarter; that they then instituted suit in the circuit court of Hot Springs county against John C. Hale and others, who were occupying parts of said quarter section, but not the land for which this suit is brought, and recovered the alleged judgment; that soon thereafter, in a suit instituted by said Hale in the same court, the plaintiffs and said Albert, Henry, and George were, be-

cause said certificate on which said judgment was based was void, perpetually enjoined from executing said judgment by a decree which the supreme court of Arkansas and of the United States affirmed; that Jacob Swepster was never in possession of the land for which this suit is brought; that said alleged entry and judgment were from their inception fraudulent and gave plaintiffs, as well as said Albert, Henry, and George, no right.

As to the alleged lease to the defendants Houston and Fife
16 and the transfer of it to this defendant, this defendant, further answering, says that on the 5th day of November, 1874, said Fife and Houston accepted a lease from plaintiff William H. of the land now known and designated as lot No. 5, in block No. 129, as laid out and numbered by said Hot Springs commissioners; that on the 12th day of January, 1875, said Houston, with the written consent of plaintiff William H. endorsed on the lease, assigned and conveyed his interest in the term and lease to said defendant Fife; that on the 19th day of February, 1875, said term and lease was by said Fife, with the consent of said plaintiff William H., sold and transferred to this defendant and one R. Gregory, and that said Gregory afterwards, on the 19th day of April, 1875, sold, assigned, and transferred all his interest in said term and lease to this defendant; that all of these transfers were made with the consent of said

plaintiff and embraced all the improvements on the said lot,
17 the said improvements belonging to the parties so transferring and being as recognized by said plaintiffs; that said lease was for the term of one year and contained a covenant of renewal from year to year, at the election of the lessees; that by said lease the annual rent reserved was $300.00 and was payable in installments of $75.00 each on the 5th day of November, February, May, and August; that it also contained a covenant to the effect that all improvements to be erected by the lessee on said lot should be and remain their property, and that they might remove them at any time within thirty days next after the expiration of the term, but no provision whereby they were to become forfeited to said plaintiff; that said lease and term were tacitly renewed on the 5th day of November, 1875; that this defendant continued to occupy

said lot after said date and to pay rent to said plaintiff on the
18 same terms; that he owed plaintiff no rent whatever on the 24 April, 1876; that he would have owed and paid him $75.00, as stipulated, on the 5th of May, 1876, if said supreme court had not before then, as it did on said 24 of April, 1876, decided the claim of plaintiffs and said Belding heirs against them; that upon learning of said decision plaintiff William H. was desirous to accept the unpaid rent to said date, April 24, 1876, and release this defendant and all his tenants, and that he proposed to make this arrangement with defendant, and he assented to it, and hence the claim of 68.85, which is the proportionate part of the quarter rent that would have been due on the said 5th of May; that this defendant and said plaintiff adjusted their matters in this way, the said plaintiff desiring to continue the relation; that defendant bought from said

parties, Fife and Gregory, and erected upon said lot, prior to
19 said 24 April, 1876, improvements to the value of $3,500.00;
that said plaintiff declared his inability, after said decision, to protect him and secure to him his improvements and the right to remove them; that in this condition of things he made said arrangement about said $68.88 with said plaintiff; that, having rented said lot from plaintiff or rather acquired it from those who did, he was willing to pay him whatever might be by apportionment due him, although not legally bound to do so; that when the receiv-r appointed by the Court of Claims arrived to take possession of the land in said quarter section and the Hot Springs reservation said plaintiff pointed out said lot to him and told and urged him to take possession of it and of this defendant's improvements, which said receiver did; that said plaintiff's covenant that this defendant should retain his improvements and have the right
20 to remove them was then violated and broken and this defendant deprived wholly of said right to remove them; that this defendant was then compelled to attorn to the United States and to rent and lease said lot and improvements from said receiver, which he did on the 1st day of June, 1876; that he held under said lease until March 3rd, 1877, when the law under which he was appointed was modified and repealed so far as to revoke and annul his appointment and relieve him from his duties as such receiver, since when to the present time — has held open and notorious possession of said lot and under claim of right and adversely to plaintiffs, a period of more than 7 years next before the commencement of this suit; that he was forced to so rent from said receiver or loose the possession of his improvements.

This defendant, further answering, says that it is true that
21 plaintiffs procured from said Albert, Henry, and George the deeds as alleged in the complaint, and also that it is true that plaintiffs and defendant within six calendar months from the first sitting of said commissioners filed before them conflicting claims to said lot, and that said claims were consolidated for the purpose of hearing the evidence and trying them, as charged in the complaint; but this defendant says that said Albert, Henry, and George had no right in said land to convey, and that said deeds conferred upon plaintiffs no right, and that plaintiff- upon the hearing of said evidence introduced nothing upon which said commissioners could lawfully award said lot to them. This defendant further says that said claim of plaintiffs was based solely upon said void entry and judgment and said lease and an assertion of plaintiffs that this defendant's improvements had been forfeited to him, which
22 was untrue and which they utterly failed to prove; that the alleged lease contained no covenant by which said improvements were to be forfeited to plaintiffs, and that he was in no default; that his claim was based on his ownership, title to, and occupancy of said improvements, and that upon the hearing of said cases as consolidated it was clearly proven that said improvements were occupied by this defendant and were his property and not the

property of plaintiffs, and that said commissioners awarded to him the right to purchase said lot as they should have done.

This defendant further says that when said lease was made plaintiff Wm. H. had no possession of said lot; that the title to it was in the United States, and that it was a void contract, having for its object the violation of said right by trespassing on said lot.

This defendant further says that ever since the first day of
23 June, 1876, he has held possession of said lot adversely to plaintiffs and under claim of right and openly and notoriously to the present time, and that from said date to the date of the institution of this suit, May 23, 1884, a period of more than seven years elapsed, of which lapse of time he claims the same benefit as if set forth in a formal plea of the statute of limitation.

This defendant further says that said award and all other awards of said commissioners were, on the 16th day of August, 1880, by an act of Congress entitled An act for the establishment of titles in Hot Springs, and for other purposes, approved and confirmed.

This defendant further says that since said award his improvements on said lot have been destroyed by fire, and that he has constructed thereon other improvements, which are worth $4,500.00, and that all this he did under claim of right, with the knowl-
24 edge of plaintiffs and without objection by them, and he prays compensation for them if he be required to convey said lot to plaintiffs.

This defendant further says that if there are in the bill of complaint any material matters not herein expressly denied or admitted they are untrue. This defendant, having answered fully, prays that the bill of complaint be dismissed, and that he have and recover his costs from plaintiffs.

G. W. MURPHY,
Counsel for Def't R. E. Allen.

Endorsed: Filed December 6, 1884. Ralph L. Goodrich, clerk.

And on January 5, 1885, the following proceedings were had, to wit:

Come the complainants, by M. W. Benjamin and R. G. Davies, Esqs., their solicitors, and file herein their replication to defendant's answer; which replication is as follows:

25 The said plaintiffs say their bill is true and the defendant's answer as set forth is not true, and this they are ready to verify.

M. W. BENJAMIN,
R. G. DAVIES, *Sol's.*

Endorsed: Filed January 5, 1885. Ralph L. Goodrich, clerk, by W. P. Feild, D. C.

26 UNITED STATES OF AMERICA,
Eastern District of Arkansas.

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 12th day of April, anno Domini one thousand eight hundred and eighty-six, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, 8th judicial circuit, *judge*, presiding and holding said court, the following proceedings were had, to wit:

On April 20, 1886:

Come the complainants, by Benjamin and Davies, their solicitors, and come the defendants, by —— ——, their solicitors, and this cause is submitted to the court upon the pleadings and evidence, and by agreement of parties it is ordered that the complainants have fifteen days and the defendants thirty days thereafter in which to file abstracts, and thereafter the complainants to have ten days and the defendants ten days thereafter in which to file briefs, and that five days thereafter be given for reply. It is further ordered that each party serve upon the opposing party copies of abstracts and briefs.

27 UNITED STATES OF AMERICA,
Eastern District of Arkansas.

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 25th day of October, anno Domini one thousand eight hundred and eighty-six, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, 8th judicial circuit, *judge*, presiding and holding said court, the following proceedings were had, to wit:

On November 10, 1886:

It is agreed between counsel in this case, M. W. Benjamin and R. G. Davies, for plaintiffs, and George W. Murphy, for defendants, that so much of the transcripts of the cases before the Hot Springs Commission as are made exhibits to the bill and were introduced in evidence, as does not refer to this but refers to other cases, shall be omitted in making a transcript for appeal in this cause unless the same was read in evidence in this case. This agreement shall also apply to the cases of Gaines and wife *vs.* Michael Waldron *et al.*, and Gaines and wife *vs.* H. A. Booth *et al.*, and Gaines & wife *v.* J.
28 Brantley *et al.*, and Gaines and wife *vs.* W. W. Joyce *et al.*
Nov. 10, 1886.

(Signed) M. W. BENJAMIN,
R. G. DAVIES, *For P'lffs.*
G. W. MURPHY,
Att'y for Def'ts Allen, Rugg, and Howard.

And on the same day the following proceedings were had, to wit:
Come the complainants, by M. W. Benjamin and R. G. Davies, Esqs., their solicitors, and on their motion it is ordered that this cause be dismissed as to the defendants A. J. Fife and R. A. Houston at complainants' costs.

And on the same day the following decree was rendered:
Now, on this day, this cause came on for final hearing upon the complaint of plaintiff and exhibits, the answer of the defendant and exhibits, and the replication of plaintiffs and the evidence as shown by the record of the commissioners and depositions taken since the commencement of this suit, and the court having heard the
29 evidence and argument of counsel, and being now sufficiently advised in the matter as to the proper decree to render herein, the court finds that the board of commissioners mentioned in said complaint, by error and mistake of law, awarded the right to purchase lot five, in block one hundred and twenty-nine, of the Hot Springs reservation, in the city of Hot Springs, Garland county, Arkansas, to R. E. Allen, the defendant hereinabove named, and issued to him a certificate of award, and in accordance with said erroneous ruling a patent has been issued improperly to said R. E. Allen, and the court is of the opinion that the said defendants hold said patent in trust, as trustee, for the sole use of said William H. Gaines and Maria Gaines.

It is therefore considered, ordered, and decreed that all right, title and interest, and estate of the defendant R. E. Allen in and to said tract of land be, and the same is hereby, divested out of said
30 defendant R. E. Allen and vested in said plaintiffs, William H. and Maria Gaines, and their heirs and assigns forever, and that said defendant R. E. Allen do make, seal, and deliver a deed conveying said lot to said plaintiffs, their heirs and assigns forever; and said defendant prays an appeal, which is by the court granted.

And it is further ordered that this cause be referred to N. W. Cox, special master of this court, who is directed to ascertain and report to this court at its next term:

First. The value of the rent of said lot since the award of the said commissioners.

Second. What amount of taxes has been paid on said lot by said defendant since the date of said award.

Third. The value of the improvements made upon said lot by the defendant before the award and since the award of said commission, to be reported separately.

And the said master may examine witnesses touching said matter, and shall reduce the same to writing and report their testi-
31 mony so taken to this court; and it is further ordered that the plaintiffs do have and recover all their costs of suit herein; and it is further ordered that all questions of law touching the several matters herein referred to the master be, and the same are, reserved until the coming in of his report, and this cause is reserved for further directions; and the court finds from the testimony

adduced that the lot in controversy is at this day of the value of nine thousand dollars.

And on November 11, 1886, the following proceedings were had, to wit:

Come the complainants, by M. W. Benjamin, Esq., their solicitor, and come the defendants, by G. W. Murphy, Esq., their solicitor, and file herein their agreement as to depositions; which agreement as to depositions is as follows:

"It is agreed that depositions in above-entitled causes or
32 either of them may be taken before any notary public after 1st April, 1885, at the office of J. M. Harrell, in Hot Springs, Arkansas, and read as evidence in all or any of said causes on the hearing as far as relevant and competent, although not taken in terms in all of them; that the petition and evidence filed and taken before the Hot Springs Commission by plaintiffs and the several defendants or persons under whom they claim for the land involved in those several causes or the certified copies thereof may, as far as applicable and relevant, be read on said hearing by any of the parties, and that the certified copies of deeds annexed to defendants' answers or any of them are true copies and may be read also on the hearing without further proof of execution and without producing the originals, and that proof as to the value of the improvements need not be taken until after the hearing, and that questions of the value of improvements shall in the cases in which the plaintiffs recover be after the hearing referred to.

33 (Signed) G. W. MURPHY, *Att'y,*
J. M. HARRELL, *Att'y,*
For Defendants.

(Signed) M. W. BENJAMIN,
Att'y for Plaintiffs.

Endorsed: Filed November 11th, 1886. Ralph L. Goodrich, clerk, by W. P. Feild, D. C.

And on the same day the following proceedings were had, to wit:

Come the complainants, by M. W. Benjamin, Esq., their solicitor, and come the defendants, by J. M. Harrell and G. W. Murphy, Esqs., their solicitors, and file herein their agreement as to certified copies of deeds, &c.; which agreement is as follows:

It is hereby agreed that on the hearing of the above causes all certified copies of deeds of conveyance of any of the lots embraced in any of said causes may be read in evidence by any or either of the parties in lieu of the originals and without further proof;
33*a* that all copies of leases filed before the Hot Springs commissioners and all copies transcribed in the evidence certified by the Commissioner of the General Land Office of the United States and the evidence as certified may be read in evidence on the hear-

ing of any of the above causes, as far as applicable and relevant, by any of the parties concerned, whether filed in the several causes or not, and that said certified copies contain all the evidence taken before the commission in regard to property sued for, except B. W. Goode's claim that his evidence is not correctly reported; otherwise all right.

M. W. BENJAMIN, *Att'y for Pl'ffs.*
G. W. MURPHY,
Att'y for Defendants R. E. Allen, D. C. Rugg, Thos. Howard, Harris Tony, J. Fenton, Chas. N. Rix, B. W. Goode, Charlotte Cohn, Henry Cohn, & John Adamson.

34 And on the same day the following proceedings were had' to wit:

Come the complainants, by M. W. Benjamin, Esq., their solicitor, and come the defendants, by G. W. Murphy, Esq., their solicitor, and file herein their agreement to take depositions; which agreement to take depositions is as follows:

It is agreed that depositions in the above causes or any of them may be taken on behalf of plaintiffs or of any of the defendants who have answered, whenever both sides are represented by attorneys present or on reasonable notice, without rule or commission, at any time before the trial, and that they may be read in the hearing, subject to exceptions as to relevancy and competency, and that at the hearing such parts of the testimony taken before the Hot Springs commissioners upon the conflicting claims to the land involved in said cases, and also — the findings and decisions of said com-
35 missioners, as are relevant may be read in evidence by any of the parties, whether they are on file as exhibits in every case or not, and that all matters in regard to value of improvements now on ground shall be referred to master in chancery, after main case — decided, to hear testimony and report upon value to the court.

G. W. MURPHY, *Att'y.*
M. W. BENJAMIN,
Of Counsel for Plaintiffs.

Endorsed: Filed November 11, 1886. Ralph L. Goodrich, clerk' by W. P. Feild, D. C.

And on November 19th, 1886, the following proceedings were had, to wit:

Comes the defendant R. E. Allen and files herein his bond in the sum of one thousand dollars, with J. B. Wood as surety, which is by the court approved; which bond is in words and figures following, to wit:

We, R. E. Allen, as principal, and James B. Wood, as
36 surety, are held and bound unto the plaintiffs, William H. Gaines and Maria Gaines, in the sum of one thousand dol-

lars; for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly hereby.

Signed and sealed this 17th day of November, 1886.

Conditioned as follows: Whereas the above-bounded R. E. Allen, who has prayed an appeal from the decree rendered against him in the above-entitled cause by the circuit court of the United States for the eastern district of Arkansas at its fall term, 1886, divesting him of all his right, title, interest, and estate in and to lot No. five, in block one hundred and twenty-nine, of the Hot Springs reservation, in the city of Hot Springs, Garland county, Arkansas, and vesting the same in the plaintiffs, William H. Gaines and Maria Gaines, and their heirs and assigns forever, and requiring him to make, seal, and deliver a deed conveying said lot to them, desires to retain the possession and control of said lot pending further proceedings,
37 which he is permitted to do on giving bond, with good security, to the plaintiffs in the sum of one thousand dollars, conditioned that he will pay them all damages they may sustain thereby in case the decree shall be affirmed or the appeal dismissed: Therefore, if said appeal be prosecuted to a hearing and the decree reversed, or if the said Allen shall pay to said plaintiffs such damages as they may sustain by reason of such his retention of the possession of said lot, this bond shall become void, but otherwise shall remain in full force.

RICHARD E. ALLEN.
J. B. WOOD.

James B. Wood states that he is a resident of the county of Garland, in the State of Arkansas; that he is worth one thousand dollars over and above his debts, liabilities, and exemptions, and owns property in said State of the value of one thousand dollars, subject to execution.

J. B. WOOD.

Subscribed and sworn to before me this 17th day of November, 1886.

J. W. BISHOP, *J. P.*

38 Endorsed: Filed and approved by order of court November 19th, 1886. Ralph L. Goodrich, clerk, by W. P. Feild, D. C.

And on April 9th, 1887, the following proceedings were had, to wit:

Comes N. W. Cox, master herein, and files his report.

Which report of master is in words and figures following:

To the hon. U. S. circuit court for the eastern district of Arkansas:

In accordance with the decree of this hon. court made in the above-entitled cause Nov. 10, 1886, as special master appointed thereunder, I have made an examination of the matters and things

therein directed. After the examination of various witnesses, whose testimony I file herewith, I find—

First. That the rental value of said lot 5, block 129, without improvements, *to be* $12.50 per lineal front foot per annum; that the frontage of said lot is 32 ft., and the time from said award to the 1st day of the April term, 1887, of this court, at which time this report is made, amount*ing* to (7 yrs. & 4 mo.)	$2,933 33
Int. at 6 % (6 yr. & 4 mo.)	645 33
	$3,578 66
That the rental value of said lot, with the improvements thereon, is $800 per year (7 yrs. & 4 mos.)	$5,866 66
Second. That the taxes paid by said defendant Allen, including sewer and sidewalk assessments, *to be* for years 1882 to 1886, inclusive. $696 55	
Less discounts on scrips 64 69	
	$631 86
Int. on same at 6 %	78 66
Am't	$710 52
Amount paid the U. S. Gov't for the purchase of said lot	$320 00
Int. on same @ 6 % (5 yrs. & 4 mo.)	102 40
Am't	$422 40
Third. The value of the improvements before the award *were*	$2,000 00
Since the award	3,500 00
	$5,500 00
Present value of improvements	$4,000 00

Respectfully submitted,

N. W. COX,
Special Master.

Depositions of witnesses taken on the 28th day of February, 1887, at the city of Hot Springs, before N. W. Cox, master, appointed by the U. S. circuit court for the eastern district of Arkansas in the case of William H. Gaines and Maria Gaines against R. E. Allen *et al.*, pending in said court.

Present: The plaintiffs, by their attorney, R. G. Davies, Esq., and the defendant, by —— ——, Esq., his attorney.

A. B. GAINES, being introduced upon the part of the plaintiffs and being first duly sworn, deposes and says to—

Q. 1. State your name, age, and residence.

A. My name is A. B. Gaines; age, 29 years; residence, Hot Springs, Arks.

Q. 2. Are you familiar with the rental value of property in the neighborhood of lot five, in block 129, in the city of Hot Springs, since the award of the Hot Springs Commission?

A. I am. I have been renting property in that vicinity since 1877.

Q. 3. What is a reasonable rental value of that lot during
41 that time with the improvements and without the improvements, said lot being 32 feet in width and 90 feet in depth?

A. With improvements, $150 per month, and without improvements it is worth $15 per front foot.

Cross-examination:

Q. 4. What is the population of the town in which the lot is situated?

A. I should say about 6,000.

Q. 5. Give your estimate of the number of commercial houses.

A. Without getting up a list I might miss it considerably. I should say there are considerably over one hundred.

Q. 6. Are you the son and agent of the plaintiffs?

A. I am.

Q. 7. Do you hold the title to their property in trust for them?

A. Yes.

Q. 8. How long have you been their agent?

A. About ten years.

Q. 9. Did you, as their agent or otherwise, ever demand of the defendant either rent for this lot or a conveyance of the title to it?

A. No.

Redirect examination:

42 Q. 10. Do you hold the title to this lot?

A. No.

A. B. GAINES.

JOHN D. WARE, being introduced and duly sworn, deposes and says to—

Q. 1. State your name, age, residence, and occupation.

A. My name is John D. Ware; age, thirty-five years; residence, Hot Springs; occupation, real-estate and insurance agent.

Q. 2. Are you familiar with the rental value of property on Central avenue since the award of the Hot Springs Commission?

A. I am to some extent. I have had some rents to collect and it has otherwise come under my observation.

Q. 3. Have you a general knowledge of what a lot situated as lot 5, in block 129, Hot Springs, 32 ft. by 90 feet deep, with a house upon it 30 feet wide by 90 feet deep, three stories high, would rent for during said time—that is to say, the market value—and, if so, what would it be?

43 A. The rental value of lot 5, in block 129, is now worth $1,000 per year with improvements and in good repair.

Q. 4. Can you state what would be a reasonable rental value per front foot for the ground of a lot 30 ft. by 90 feet deep during that

time, in that locality, as a ground rent, without any improvements upon it?

A. I think it would be worth ten per cent. upon whatever the land improvements would bring. By taking off the improvements and calculating the ten per cent. upon the value of the land would be its rental value. I estimate that ground to be worth at present $200 per front foot. It has not been worth so much all of the time since the award of the commission.

Q. 6. Have you sold any property or had any offers to buy property in that immediate neighborhood; and, if so, at what price?

A. We — lot 6, in block 77, on the opposite side of the street, for $6,000. We have had offers for lot 21, in said block, $200
44 in cash per front foot, and we made that offer to the owner and he refused it.

JOHN D. WARE.

O. F. SMITH, being introduced upon the part of the plaintiffs and being duly sworn, says to—

Q. 1. State your name, age, residence, and occupation.

A. My name is O. F. Smith; age, 49 years; residence, Hot Springs, Ark.; occupation, real-estate and loan agent.

Q. 2. How long have you been in the real-estate business in Hot Springs?

A. I went into it four years ago last June.

Q. 3. Are you familiar with the rental value of property on Central avenue, in the city of Hot Springs, during that time, in the vicinity of lot 5, in block 129?

A. I took charge of some buildings in block 77, just opposite, after I went into business—I think about three years ago.

Q. 4. Have you a general knowledge of what a lot situated
45 about as lot 5, block 129, with a house upon it 30 feet wide and 90 feet deep, three stories high, would rent for during said time—that is to say, the market value; and, if so, what would it be?

A. My judgment is that such a building would rent at $720 per year. I place it at $720, to be safe, for it might be vacant some. It might rent for more.

Q. 5. Can you state what would be a reasonable rental value per front foot for the ground of a lot 30 feet by 90 feet in depth during said time in that locality as a ground rent without any improvements upon it?

A. I should say about from $13 to $14 per front foot.

Cross-examination:

Q. 6. On what do you base your opinion that it is worth from $13 to $14 per front foot per annum rent?

A. On the value of the ground and the way the property rents along there.

Q. 7. Have you known of any rent or improved property having been rented in that vicinity?

A. I have not.

O. F. SMITH.

46 J. W. PARKER, being introduced upon the part of the defendant and duly sworn, says:

Q. 1. State your name, age, residence, and occupation.

A. Name is J. W. Parker; age, 76 years; residence, Hot Springs; at present in no business.

Q. 2. How long have you resided here?

A. Thirty-three years.

Q. 3. Do you own much real estate in Hot Springs?

A. Myself and wife own about 65 lots, 50 x 150 ft.

Q. 4. Have you a general knowledge of the rental value of land in Hot Springs—say lot 5, in block 129?

A. I have not known of any renting for years there. I have a general idea of the value of it, and know what I think its rent would be worth. I have been renting in the upper end of the town ever since I have been here.

Q. 5. Is the rental of property worth more or less where you have been renting than in this block?

A. It is worth more.

47 Q. 6. What, in your opinion, is a fair rental per front foot per annum for this lot 5, block 129, from the date of the award by the Hot Springs commissioners up to the present time?

A. I would think about $5.00 a front foot.

Q. 7. Has the rental of property increased or diminished here since the award in 1879?

A. I don't think that it has changed much up to the present time.

Cross-examination:

Q. 8. What is the size of the lot?

A. I do not know.

Q. 9. What improvements are on it?

A. A frame building.

Q. 10. What is the size and extent of it?

A. I have no idea.

Q. 11. What is the value of the land per front foot with a good title free of incumbrance?

(Objected to by defendant.)

A. I couldn't say anything about it, as I do not know the size of the lot.

Q. 12. Have you ever leased or rented property in the vicinity of this lot?

A. I never have.

Redirect examination:

48 Q. 13. You have known of property being rented in that vicinity, have you?

A. Yes; my son rented one and I think that he paid $18.00 per month for the house and ground.

Recross-examination:

Q. 14. Do you know the size of the lot he rented, the value of the improvements, or the amount of rent he paid?

A. I do not know the size. There was a frame building two stories high, of which he rented two rooms below.

J. W. PARKER.

ED. HOGABOOM, being introduced and duly sworn, deposes and says:

Q. 1. State your name, age, residence, and occupation.

A. My name is Ed. Hogaboom; age, 44 years; residence, Hot Springs; occupation, druggist.

Q. 2. Do you know the rental value of real estate in Hot Springs, Ark's?

A. I couldn't answer that yes. I have some idea of it, like every other business man. I have leased ground here at present
49 time and as long ago as eight or nine years.

Q. 3. Do you think you know enough of it to enable you to form or have an opinion as to the rental value?

A. Yes, sir.

Q. 4. From the date of the award by the Hot Springs commissioners, in 1879, to the present, what, in your opinion, is and has been a fair, reasonable ground rent per front foot for lot 5, block 129?

A. I should say, basing it upon the value of the ground—I would place it at about $9 per front foot per annum, estimating the ground at $150 per front foot and at six per cent. upon that valuation. That would be as low as I would place it.

Cross-examination:

Q. 5. Did you say, in answer to the preceding question, that you were less familiar with the rental values of property in the location of this lot than any other locality, perhaps?

A. Yes, sir; meaning business property.

Q. 6. What is a reasonable price—that is, the market value—
50 of a lot situated as this one is, per front foot, to sell, with a good title, free of incumbrance, say 32 by 90 feet?

(Objected to by defendant.)

A. I estimate it, as I did before, at $150. It is pretty hard to put values upon property in Hot Springs. There are so many contingencies.

Q. 7. You say you are renting property under a ground lease. Where is it situated and what are you paying?

A. I have two leases of ground. One is on lot 45, in block 89, and the other is part of lot 1, in block 79, and am interested in lot 12, block 87. I pay on lot 45, in block 89, $12.50 per front foot annual rent. I have a brick building on that lot. The lease is ten years, I to pay all taxes on the property. At the term of the lease I am to have the full amount paid out for excavation and sewer

improvements. I pay all the taxes, including the assessment for sewer. My impression is that there are the usual stipulations as to repairs. As to lot 12, in block 87, I cannot state the terms of the lease. Mr. Rix is more familiar with that.

51 Q. 8. What has money been worth to land in Hot Springs since the award of the Hot Springs Commission, based upon good real-estate security?

(Objected to by def't.)

A. The ruling rate has been 10 %, outside of the commissions, &c.

Redirect examination:

Q. 9. Is rent of land worth more or less in block 89 than in 129?

A. As I have stated, I think that it is worth more in 89. I paid $300 per front foot in that block last year for a lot.

Q. 10. About how much more per front foot?

A. I would say that rent in block 129 would be about 33⅓ per cent. less than in block 89.

ED. HOGABOOM.

M. MOSCOWITZ, being introduced upon the part of the defendant and sworn, says:

Q. 1. State your name, age, residence, and occupation.

A. My name is M. Moscowitz; age, 43 years; residence, Hot
52 Springs; at present about all I am doing is dealing in real estate.

Q. 2. Do you know enough about the rental values of real estate in Hot Springs to enable you to state what would be a reasonable ground rent per front foot for lot 5, in block 129?

A. That is pretty hard for me to answer. I think I am well enough acquainted to state what would be a reasonable ground rent for it. I think it would be worth from $6 to $7.50 per front foot ground rent, but the buildings on it has been unoccupied most of the time. I have lived close by it and have gone through it several times and seen that it was vacant.

Q. 3. Was rent here higher or lower before the awards were made by the Hot Springs Commission than since?

A. It was higher before the award than now.

Q. 4. Can you state why this is so?

A. The most of the business property was owned by a few men, and the business portion of the town was in a small locality and lots were hard to get. Since then it has spread out all over.

53 Cross-examination:

Q. 5. Are you one of the defendants in the case of Gaines against Madison and in the case of Gaines against Smith and Moscowitz?

A. I can't consider myself as such. The Smith property I never defended, and in the Madison case my wife bought an interest, and it doesn't belong to me.

Q. 6. What business have you been engaged in for the last ten years?

A. Merchandizing.

Q. 7. Were you ever a real-estate agent?

A. No; but kept pretty well posted, as I dealt with it more or less.

Q. 8. Do you know of any real estate in the vicinity of this lot renting for a ground rent or selling since 1879?

A. In the immediate vicinity I do not know, with the exception of one house, which was sold during the boom of 1883, 25 feet front, for $4,000. That is the property joining Clayton's, in the corner of said block 129.

Q. 9. Did you sell any property on the opposite side of the
54 street, in block 77? If so, when, how much did you sell, and how much did you get for it?

A. I sold a lot, 18 ft. 8 in. front, during 1883 for $5,000, and got more for it on account of the adjoining lot being too small, and he was compelled to have it.

Q. 10. How much did lot 6, in block 77, sell for, and when?

A. It sold lately; being one of the best lots, fronting on Bridge street 25 ft., was sold by Mr. Latta for $6,000. The party who bought it told me that he was compelled to have it, and paid more for it than its value in case he has to remove his bakery.

Q. 11. How much did lot 21, in block 77, sell for, and when?

(Objected to by def't.)

A. That lot is 33 feet front and was offered to me for $6,000, and my bid was $5,000 without commissions. I do not know whether it has been sold since, and if sold I do not know for what amount. This lot fronts Malvern street.

55 Q. 12. Don't you know it to be a fact that the business transacted on Central avenue between Chapel street and the Gaines block, at the north end of block 130, has been constantly on the increase since 1879?

A. Since this litigation commenced the business has certainly increased as the population has increased.

Q. 13. Please answer the question yes or no.

(Objected to by def'ts.)

A. I do not know whether the business has increased or not. I see more chicken-coops and 5 and 10 c. restaurants.

Q. 14. Isn't it a fact that immediately adjoining this lot the largest business houses, doing the most business, have located since 1879; the post office has been located in the Gaines block, the first and largest brick buildings built in the vicinity, and business of all kinds has been moved from the upper end of the town and located between these two points and is now continually being ex-
56 tended beyond Chapel St., in a southerly direction?

(Objected to by def't.)

A. It is a fact that business houses doing the most business have located in that locality; that the post office has been located in the

Gaines block; that large buildings have been built there since 1879. All the business has not moved from the upper end to the lower end; only one store—O'Brien. Business is still done up there, and property commands nearly twice the rent that property does in the lower end of the town. The business is being extended beyond Chapel St. I explain it in this way—extraordinary inducements were given. Basements, stores, and upstairs in brick houses don't bring any more rent than in 1879 in frame houses, when the insurance was 7 and 8 %.

Q. 15. What storehouse in the north end of the town, in a brick building, rents for twice as much as the storehouse occupied by Miller, Sterns & Co., hardware, adjoining the lot in controversy?

A. I had reference to frame buildings before the late fire
57 of 1886. Mendel paid for the lower story from $75 to $100 per month in a frame building and paid 7 % insurance. I do not know what he pays now in a brick building.

Q. 16. Isn't the locality of this lot the center of business of the city of Hot Springs?

A. No.

M. MOSCOWITZ.

J. T. MORRIS, being introduced on the part of the plaintiffs and duly sworn, —:

Q. 1. State your name, age, residence, and occupation.

A. My name is J. T. Morris; age, 40 years; residence, Hot Springs; occupation, dentist.

Q. 2. Do you know enough about the rental of land in the town of Hot Springs here to enable you to form an opinion as to the rental value per front foot of lot 5, in block 129?

A. I do not.

J. T. MORRIS.

58 WILLIAM H. GAINES, being introduced upon the part of the defendant, says:

Q. 1. State your name, age, and residence.

A. My name is Wm. H. Gaines; age, 89 years; residence, Hot Springs.

Q. 2. Are you plaintiff in this suit?

A. Yes.

Q. 3. Did you ever, after the awards were made by the Hot Springs commissioners, demand of either *of* the defendant R. E. Allen or D. C. Rugg rent for lot 5, block 129, or lot 10 or 14, in block 77?

A. I never did.

Q. 4. Did you up to the time of bringing your suits ask either of them to convey the title to you?

A. After the decision of the Supreme Court in the Rector case I laughed at them, and told them that I thought that they had had the property long enough, and that they had better turn it over. This was about the time I brought my suits.

Q. 5. Had you ever before then stated or intimated to them in any way that you claimed the lots?

59 A. I always told them that they were illegally awarded when they talked to me about them.

Q. 6. But did you tell either Rugg or Allen that *or* between the date of the awards and the Rector decision?

A. I think so. I don't think there was a tenant who did not talk to me about it, and I uniformly told them that the award was illegally made whenever I spoke of it.

(Objected to by plaintiffs' attorney.

WM. H. GAINES.

R. E ALLEN, being introduced upon the part of the defendant being first sworn, deposes and says:

Q. 1. State your name, age, residence, and occupation.

A. My name is R. E. Allen; age 72, and residence, Hot Springs. I am the defendant in this case.

Q. 2. Do you know of real estate renting in Hot Springs—
60 that is, have you a general knowledge of it sufficient to enable you to state what would be a reasonable ground rent per front foot for lot 5, in block 129, since the awards were made, in 1879, to the present?

A. I have some knowledge. I think that for lot 5, in block 129, $5 to $6 per front foot would be a reasonable rent during that time.

Q. 3. Have you a house on that lot?

A. I have.

Q. 4. I wish you would describe it, giving its dimensions, &c., and its value.

A. In 1878 I had a two-story house upon it about 35 feet deep and 29 feet wide, two stories high. In March or April my neighbor's house took fire and burned the most of my house, leaving a part of the first story. In the spring and summer of 1879 I rebuilt upon it and made it three stories high, but did not have the buildings quite finished. This was before the award. The improvements were worth $2,000. In the fall of 1880 I commenced to
61 build another house in the rear of the first one, which was completed in March, 1884. That building is 55 feet deep by 29 feet, three stories high. This building I consider to be worth $4,000. This building is cut up into rooms for a hotel and has a dining-room that will seat 72 persons. The second story is all plastered, and a part of the lower story. The third story is ceiled and papered. Other improvements, $235 since the award.

Q. 5. Now, did or did not the plaintiffs or either of them, ever after the awards and before the bringing of these suits say or intimate to you in any way that they expected or wished you to pay them rent or to convey to them the title to the lots, or that the award in your favor was wrong or illegal?

A. They did not say to me that they expected me to pay rent or to convey the tittle to the lots, nor that the award was illegal. I never had any conversation with either of them in relation to the matter until after suit was brought.

62 Q. 6. If you can state what would be a reasonable ground rent from the date of the awards to the present for lots 10 and 14, in block 77, please do so.

A. I think that from $5 to $6 per front foot per annum.

Cross-examination:

Q. 7. Is there any difference in the value of lots 10 and 14 as to ground rent and lot 5, in block 129?

A. It would depend upon circumstances. There might have to be some excavating to be done on lots 10 and 14.

Q. 8. Please give us an itemized statement of the cost of materials, the quality thereof, and the cost of labor in the erection of the building upon lot 5, block 129.

A. I cannot do that. I never kept an account of the materials and work—that is, I never set down anything; but the last building that I put — is a good, strong building.

Q. 9. Now, Mr. Allen, isn't it a fact that the building that you have now on that lot was condemned by the city officers as
63 being unsafe, and that it came near falling down and you were required to brace it up.

A. The front building got somewhat out of shape. I had to raise the building twice to get it up to the grade of the street, and in raising it the first time it did weaken the building, and it was then that they notified me to repair it.

Q. 10. How do you derive your knowledge of the value of ground rent in that locality?

A. Before the award was made by the commissioners houses rented for double of what they have rented for since—I mean wooden houses—and, before the award, when I leased from Mr. Gaines I agreed to give $10 per front foot per year.

R. E. ALLEN.

It is agreed that the defendant has paid, taxes, $527.05; city taxes for '81 and '82, $47.56; sewer tax, $72; sidewalk, $50, and to the Government for purchase, $320; connecting with the sewer, $125. The purchase was made.

N. W. COX, *Master.*

64 S. A. SAMMONS, being introduced upon the part of the defendant and being sworn, says:

Q. 1. State your name, age, residence, and occupation.

A. My name is S. A. Sammons; age, 45 years; residence, Hot Springs; occupation, merchant.

Q. 2. How long have you resided here?

A. Since 1870.

Q. 3. Have you a knowledge of the rental value of real estate here sufficient to enable you to state what would be a fair or reasonable ground rent for lot 5, in block 129, and lots 10 and 14, in block 77, from the rendition of the award by the Hot Springs commissioners, in 1879, to the present?

A. In a general way, I have.

Q. 4. Please state what, in your opinion, would be a reasonable rent per front foot for those lots during that time.

A. I think that from $8 to $10 would be a reasonable rent for them. During the first three years of that time the principal business of the town was done up in the neighborhood of the Arlington hotel. Then it moved down to where it is now, and there being but the one street to do business on the rents were worth more. Lately business has gone further or spread out on different streets at the lower end of the valley, and since that began I don't consider rents in the blocks mentioned worth as much as before that occurred. I think ground rent is lower than before the award on account of the town covering more space or new streets opening up for business.

65

Cross-examined:

Q. 5. What business are you in now and have been in since 1879?

A. Boarding-house and grocery.

Q. 6. What is the market value per front foot of the land without any improvements situated about where the lots are situated that you have testified about, without incumberance and a good title, since 1879?

(Objected to by def't's counsel.)

A. I think that that property would sell for $200 to $250 per front foot.

66

Q. 7. Whether, considering the value of money at Hot Springs since 1879, the rate of interest at which it could be lent on good security, this hasn't been reasonably worth 10 % on its market value as ground rent.

(Objected to by def't.)

A. That is all owing to circumstances. Money has been readily lent here at 10 %. I don't think that it would be worth that amount.

Q. 8. Wouldn't any of it bring 10 % as a rental on $200 per front foot per year, estimating either as a ground rent or both ground and improvements, such as were upon it and have been put upon it?

A. No, sir; I don't think so.

Q. 9. Take lot 10, in block 77, with improvements, probably costing $800 and renting at from $40 to $50 per month, the size of the lot 23 ft. by 90 ft., wouldn't that bring 10 % on the ground at $200 per front foot?

(Objected to by def't.)

A. As a matter of course, it would if you keep it rented all of the time.

67

S. A. SAMMONS.

GEORGE M. FRENCH, being introduced upon the part of the defendants and duly sworn, says:

M- name is George M. French; age, 51 years; residence, Little Rock; occupation, civil engineer.

Q. 1. Did you take the census of the city of Hot Springs, Garland county, Ark.; and, if so, when and under what authority?

A. I took *in* once in 1875, at the time I made a survey of the Hot Springs reservation; that census was taken with the same object in view as in making the survey—to furnish information to the Congress of the United States. I also took a census again in 1880 by authority of the United States.

Q. 2. What was the population of said city in 1880?

A. Between 3,400 and 3,500. I do not remember the exact figures.

Q. 3. If you can state the present population of said city approximately, please do so.

68 A. Allowing for the increase from 1880—7 years—to be the same in proportion to the population that it was from 1875 to 1880, we ought to have a population now of between 4,500 and 5,000.

Q. 4. Could or could not as many as 600,000 people be domiciled and located comfortably within the corporate limits of said city?

A. In a sanitary point of view I am not able to state how thick people could be settled in safety; but the area of this city allowing each inhabitant thereof 200 square feet, including domicil territory and the use of streets and alley-, there could be located upon that basis 579,344 inhabitants.

Cross-examination:

Q. 5. Excluding streets and alleys, permanent reservation, Government lots unsold, property unfit for any purpose, how many could you locate comfortably?

A. 250,000.

Q. 6. Assuming that there were 125,000 located in the

69 upper end of the town and two or three hundred thousand located in the lower end of the town, where would be the most valuable property of the city?

A. On general principle it would be where the most business was done.

GEO. M. FRENCH.

W. J. LITTLE, being introduced upon the part of the defendant and first sworn, says:

Q. 1. State your name, age, residence, and occupation.

Ans. My name is W. J. Little; age, 43 years; residence, Hot Springs; occupation, merchant.

Q. 2. How long have you resided in Hot Springs?

A. About 14 years.

Q. 3. Have you a general knowledge of the rental value of land here during that period sufficient to enable you to state whether it was higher or lower before the awards by the Springs commissioners in 1879 than since?

70 A. My knowledge is of a general character. I have not rented any ground myself. I think that ground rented higher before the awards than since for the reason that before the

award of the commissioners being in possession gave a basis for a claim.

WM. J. LITTLE.

N. M. SLOAN, being introduced upon the part of the plaintiff and first duly sworn, says to—

Q. 1. State your name, age, residence, and occupation.

A. My name is N. M. Sloan; age, 49 years; residence, Hot Springs; occupation, carpenter and builder.

Q. 2. How long have you been in the business?

A. In the business about 20 years; in Hot Springs for the last nine years.

Q. 3. Have you made an estimate on the value of the improvements upon lot 5, block 129, of the Hot Springs reservation? And, if so, state what it is, and what said improvements would be worth to move off the lot.

71 A. Yes; I estimate the value when made at $2,500; that they are now worth $2,000; that to move them off it would be worth $200. Mr. Bray and myself made the estimate jointly, and we agreed.

N. M. SLOAN.

GEORGE W. BRAY, being introduced upon the part of the plaintiffs and duly sworn, deposes to—

Q. 1. State your name, age, residence, and occupation.

A. My name is George W. Bray; age, 36 years; residence, Hot Springs; occupation, carpenter and builder.

Q. 2. How long have you been in the business?

A. About 17 years in the business. In Hot Springs the last six or seven years.

Q. 3. Have you made an estimate on the value of the improvements upon lot 5, block 129, of the Hot Springs reservation? And, if so, state what it is and what said improvements would be worth to move off the lot.

72 A. I estimated the value when made at $2,500; that they are worth now $2,000; that they would be worth to move off about $200. Mr. Sloan and I made the estimate jointly and we agreed.

GEO. W. BRAY.

S. P. VAN PATTEN, being introduced on the part of the plaintiffs and first duly sworn, deposes and says to—

Q. 1. State your name, age, residence, and occupation.

A. My name is S. P. Van Patten; of lawful age; residence, Hot Springs, Ark.; occupation, architect and builder.

Q. 2. How long have you been engaged in the business?

A. Eleven years. The last three and a half of that time in Hot Springs.

Q. 3. Have you made an estimate of the value of the improvements upon lot 5, in block 129, in the city of Hot Springs? And, if

so, state what it is and what said improvements would be worth to move off of the lot.

A. I have. I estimate the value when made at $5,500; that they are worth now $4,000, and to move them off would be worth
73 $150. I made this examination in connection with Mr. P. J. Ledwidge and we fully agreed in our estimate.

S. P. VAN PATTEN.

P. J. LEDWIDGE, being introduced upon the part of plaintiffs and first duly sworn, deposes and says to—

Q. 1. State your name, age, residence, and occupation.

A. My name is P. J. Ledwidge; age, 44 years; residence, Hot Springs; carpenter and builder.

Q. 2. How long have you been in the business?

A. Since I was nine years old, and in it in Hot Springs for the last eleven years.

Q. 3. Have you made an estimate on the value of the improvements upon lot 5, in block 129, in the city of Hot Springs? And, if so, state what it is and what said improvements would be worth to move them off of the lot.

A. I have, and estimate the value of said improvements when put there to have been $5,500; that they are worth now
74 $4,000; that to move them off they would be worth $800. Mr. S. P. Van Patten and myself made the examination together and we agreed fully in our estimate.

P. J. LEDWIDGE.

W. H. GAINES & WIFE
v.
R. E. ALLEN *et al.* } 642.

Date of award, Dec'r 1, 1879.
" " filing bill, May 23, 1884.

Rent as per lease—4 y'rs 6 mo. & 22 d's—& int.		$1,548 22
" from fili'g compl't to fil'g master's report & int.		1,287 66
		$2,835 88
		466 62
		$3,302 50
By taxes paid as per report	$710 52	
" am't " U. S. Gov't	422 40	
" present value of improvements	4,000 00	
		5,132 92
Diff.		$2,297 04

N. W. COX,
Special Master.

STATE OF ARKANSAS, }
County of Garland. }

I, William H. Moyston, clerk of the circuit court and *ex officio* recorder in and for the county and State aforesaid, do hereby certify that there appears on the records in my office, in Book "J,"
75 pages 588 to 591, a deed of trust from R. E. Allen and wife to Geo. W. Murphy, trustee, for the benefit of H. E. J. Boardman, in the sum of four thousand dollars, and is on lots No. 5, block 129; lot No. 1, block No. 19, and lots 6, 7, 8, 9, 10, and 11, block 20, and lots 4, 5, 6, & 7, in block 21, in the city of Hot Springs, Arks.; said deed of trust dated March 22, '83, and filed for record on said day, due in 5 years from date, viz., March 22, '88, and is unsatisfied on said record.

Witness my hand and seal this 1st day of March, 1887.

[L. S.] WM. H. MOYSTON, *Clerk*,
By EDWARD REID, *D. C.*

The plaintiffs' counsel presents and desires to have filed with the testimony in this cause the above certificate, which is done.

N. W. COX,
Special Master.

76 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas begun and holden on Monday, the eleventh day of April, anno Domini one thousand eight hundred and eighty-seven, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, 8th judicial circuit judge, presiding and holding said court, the following proceedings were had, to wit, on May 10th, 1887:

Comes the defendant R. E. Allen, by G. W. Murphy, Esq., his solicitor, and files herein his exceptions to report of master.

Which exceptions to report of master are as follows:

The defendant R. E. Allen excepts to the report and findings of the special master in this case because—

First. The findings by said master of the rental value of lot 5, in block 129, to be with the improvements $800 p-r annum
77 and without improvements $12.50 per front foot per annum, are in excess of the rent reserved and fixed by the lease referred to and relied on in the bill of complaint and read in evidence by the plaintiffs, and are also against the evidence, which shows said rental value to be not exceeding $6.5 per front foot per annum.

Second. The finding of $355.75 as interest in plaintiffs' favor is unwarranted by said master's commission and is contrary to the evidence, which shows that no demand was ever made of defendants by plaintiffs or their agent, either for a conveyance of the title to said lot or for the payment of rent for it.

And the defendant submits that inasmuch as the testimony taken before said master shows that no demand was made by plaintiffs of any of the defendants for rent for said lot, and that defendant since the date of the award by the Hot Springs Commission of the right to purchase said lot had been permitted by plaintiffs
78 to occupy said lot and pay taxes on it as his own, none of the items or sums found by said master in their favor should be allowed.

G. W. MURPHY,
Sol. for Def't.

Endorsed: Filed May 10, 1887. Ralph L. Goodrich, clerk.

On the final hearing the following depositions and proofs were read:

Deposition of R. E. Allen.

Q. Are you the same R. E. Allen who filed a petition before the Hot Springs Commission to purchase the land since designated as lot (5), block (129), of the Hot Springs reservation, in Arkansas, for which this suit is brought?

A. I am.

Q. In presenting your testimony to the commissioners did you omit to file any writing signed by the plaintiff William H.
79 Gaines in reference to that land or the buildings on it? If so, what was it?

A. I omitted to file a receipt that Maj. Gaines gave me for rent on the 30th of September, 1875.

Q. Will you file that receipt now with the notary taking these depositions, to be made a part of your deposition as Exhibit "A" and to be filed as such by him?

A. Yes; and I now hand it to him.

(The receipt alluded to is here handed by the witness to me, marked Exhibit "A" to R. E. Allen's Deposition, and is filed by me as such.—W. A. Kirk, notary public.)

R. E. ALLEN.

EXHIBIT A TO R. E. ALLEN'S DEPOSITION.

HOT SPRINGS, ARKS., *Sept.* 30, 1875.

Received of R. E. Allen one hundred and ten dollars in full for rent or lease of ground joining Strickland & Co.'s saloon and bowling alley, in the south end of Hot Springs valley, on which R. E. Allen now has a building. The above consideration is in
80 full for rent or lease of ground up to the 5 November, 1875.

WM. H. GAINES.

Endorsed: Opened and published by order of court Jan'y 6, '86. Ralph L. Goodrich, clerk, by W. P. Feild, D. C.

The following is the testimony of Wm. H. Gaines before the Hot Springs Commission:

(Here follow three maps marked pp. 81, 82, & 83.)

84 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., —— —, 188–.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed copy of petition No. 784, before the Hot Springs Commission, testimony submitted in support of same, and the finding of the commission are true and literal exemplifications from the originals on file or on record in this office.

United States General Land Office Seal.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

N. C. McFARLAND,
Commissioner of General Land Office.

[Endorsed:] No. 784. Hot Springs Commission. Petition of William H. and Maria Gaines. Filed Octo. 26th, '77. J. W. Anderson, cl'k H. S. com'rs.

85 UNITED STATES OF AMERICA:

Hot Springs Commission.

In the Matter of the Claim of WILLIAM H. GAINES and MARIA GAINES.

To the Hot Springs commissioners:

Your petitioners, William H. Gaines and Maria Gaines, now both in their own right, and for over twenty-five years residing at Hot Springs, in the State of Arkansas, upon the premises herein claimed, represent that they claim the following-described tract of land, a map of which is filed herewith and made a part hereof, marked Exhibit "A," situated in the Hot Springs reservation, which tract is bounded as follows, to wit: On the north by the Hot Springs Mountain reservation, with a line bearing as follows: S. 82° E. 260 feet, S. 12° 11′ E. 270 feet, N. 77° 43′ E. 680 feet, and N. 65° 03′ E. 586.3 feet, N. 88° 11′ E. 220 feet, N. 60° 19′ E. 500.1 *foot*, N. 44° 01′ E. 590 feet to ¼-sec. line between S. E. ¼ and S. W. ¼ of sec. 33, T. 2 S., R. 19 west; thence on the east by said line 1,325 feet south; thence on the south by the township line between T. 2 S. and T. 3 S.,
86 being south line of S. W. ¼ of sec. 33, T. 2 S., R. 19 W., running west 2,640 feet; thence to sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in R. 19 W.; thence on the west by the sec. line between secs. 32 and 33, T. 2 S., R. 19 W., 1,320 feet, running north to place of beginning, lying and being in the S. W. ¼ of sec. 33, T. 2 S., R. 19 west, except the following-described lands, a map of which is filed herewith and made part hereof, marked Exhibit "B," which lands your petitioners have sold and given to the following parties, to wit: Given to the Methodist Episcopal church the following lands: Commencing at a point 60 ft. N. of sec. cor. post for sect's 32 and 33, T. 2 S., and sect's 4 and 5, T. 3

S., all in R. 19 W., thence bearing S. 83° east one hundred and forty feet; thence N. 7° E. fifty (50) feet; thence N. 83° W. 150 feet; thence south 51 feet to place of beginning, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to Frank Horton the following lands: Commencing at a point N. 33° E. of sec. cor. post for secs. 32 and 33, T. 2 S., and sect's 4 and 5, T. 3 S., all in range 19 west and distant therefrom 305 ft., thence bearing south 84° E. 120 ft.; thence S. 6° E. 24 ft.; thence N. 84° E. 120 ft.; thence N. 6° E. 24 ft. to point of commencement, lying and being in the S. W. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 west, all the above bearings being read from the magnetic meridian.

87 Sold to Joseph Molen the following lands: Commencing at a point N. 35° 30′ W. of centr- subdivision stake on line bet. S. W. ¼ sec. 33, T. 2 S., and N. W. ¼ sec. 4, T. 3 S., R. 19 W., and distant therefrom 630 ft., thence bearing N. 29° 30′ W. 200 ft.; thence S. 60° W. 100 ft.; thence S. 29° 30′ E. 200 ft.; thence N. 60° E. 100 ft. to point of commencement, lying and being situate in the S. W. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 west, all the above bearings being read from the magnetic meridian. Sold to Thomas Secoy the following lands: Commencing at a point N. 87° 30′ W. of centre subdivision stake on line between S. W. ¼ of sec. 33, T. 2 S., and N. W. ¼ of sec. 4, T. 3 S., all in range 19 W. and distant therefrom 640 ft., thence bearing S. 37° 20′ E. 110 ft.; thence N. 81° 50′ E. 51 ft.; thence N. 37° 20′ W. 120 ft.; thence S. 60° W. 50 ft. to place of beginning, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to James Ritchie the following lands: Commencing at a point N. 35° E. of centre subdivision stake on line bet. S. W. ¼ of sec. 33, T. 2 S., and N. W. ¼ of sec. 4, T. 3 S., all in range 19 W. and distant therefrom 720 ft., thence bearing N. 60° E. 100 ft.; thence S. 29° E. 250 ft.; thence S. 43° W. 105 ft.; thence N. 29° W. 285 ft. to point of commencement, lying and being in S. E. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian.

88 Sold to C. S. Williamson the following lands: On the north by the old Benton road, with a line bearing N. 60° E. 150 ft.; thence on the east by the claim of Julia S. Carhart and D. Carey, with a line bearing S. 29° 30′ E. 430 ft.; thence on the south by Gaines avenue, with a line bearing S. 60° W. 150 ft.; thence on the west by the claim of Wm. H. Gaines, with a line bearing N. 29° 30′ W. 430 ft. to place of beginning, lying and being in the S. E. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to I. W. Carhart the following lands: Commencing at a point N. 60° E. of centre subdivision stake on line between S. W. ¼ of sec. 33, T. 2 S., and N. W. ¼ of sec. 4, T. 3 S., R. 19 W., and distant therefrom 735 ft., thence bearing N. 29° 30′ W. 230 ft., thence N. 60° E. 190 ft., thence S. 69° 51′ E. 480 ft., thence S. 29° 30′ E. 95 ft., thence S. 61° W. 400 ft., thence N. 29° 30′ W. 200 ft., thence S. 60° W. 100 ft. to point of commencement, lying and being in the S. E. ¼ of the S. W. ¼ of sec. 33, T. 2 S.,

R. 19 W., all the above bearings being read from the magnetic meridian. Given to Sarah Flowers the following lands: Commencing at a point N. 23° 10′ east of sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in range 19 W., and distant therefrom 505 ft., thence bearing N. 82° 15′ E. 72 ft.. thence S. 7° 45′ E. 22½ ft., thence S. 82° 15′ W. 72 ft., thence N. 7° 45′ W. 22½ ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 west, all the above bearings being read from the magnetic meridian. Given to Fannie Williamson the following lands: Commencing at a point N. 83° E. of sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in range 19 west and distant therefrom 740 ft., thence bearing N. 40° W. 300 ft., thence S. 55° W. 40 ft., thence N. 40° W. 40 ft., thence S. 55° W. 70 ft., thence S. 23° E. 280 ft., thence N. 75° E. 200 ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being taken from the magnetic meridian. Given to Mary P. Gaines the following lands: Commencing at a point N. 21° 5′ E. of sec. cor. post for sec's 32 and 33, T. 2 S., and sec's 4 and 5, T. 3 S., all in range 19 west and distant therefrom 537 ft., thence bearing N. 79° E. 72 ft., thence S. 11° E. 41½ ft., thence S. 79° W. 72 ft., thence N. 11° W. 41½ ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to Wm. H. Nelson the following lands: Commencing at a point N. 28° E. of sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in range 19 west and distant therefrom 680 feet, thence bearing N. 58° E. 200 ft., thence N. 35° W. 135 ft., thence S. 75° W. 120 ft., thence 86° W. 170 ft., thence S. 75° E. 45 ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Given to the Protestant Episcopal church the following lands: On the north by the claim of Wm. H. Gaines, with a line running N. 80° E. 65 ft.; on the east by the Gaines claim, with a line running S. 18° E. 70 ft.; on the south by the claim of S. W. Fordyce, with a line running N. 18° W. 108 ft.; thence N. 80 E. 50 ft.; thence S. 18° E. 20 ft. to the place of commencement, all the above bearings being read from the magnetic meridian.

89

90

Given to Kate McGrath the following lands: Commenceing at a point N. 9° 30′ E. of sec. cor. post for secs. 32 and 33, T. 2. S., and sec-. 4 and 5, T. 3 S., all in range 19 W. and distant therefrom 647 feet, thence bearing south 79° 30′ W. 102 ft., thence S. 10° 30′ E. 50 ft., thence N. 79° 30′ E. 102 ft., thence N. 10° 30′ W. 50 ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to George W. Baxter the following lands: Commencing at a point S. 12° 40′ E. of ¼-sec. post fret. sec'ts 32 and 33, T. 2 S., R. 19 W., and distant therefrom 1,492 ft., thence bearing south 85° 45′ W. 65 ft., thence S. 40° 15′ E. 12½ ft., thence N. 85° 45′ E. 65 ft., thence N. 40° 15′ W. 12½ ft. to point of com-

mencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33,
T. 2 S., R. 19 W., all the above bearings being read from the
91 magnetic meridian. Sold to B. W. Goode the following lands:
Commencing at a point 13° 5′ E. of ¼-sec. post bet. secs. 32
and 33, T. 2 S., R. 19 W., and distant therefrom 1,420 ft., thence
bearing S. 85° W. 100 ft., thence S. 50° E. 20 ft., thence N. 85° E.
100 ft., thence N. 50° W. 20 ft. to point of commencement, lying
and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W.,
all the above bearings being read from the magnetic meridian. Sold
to G. L. Wilson the following lands: Commencing at a point S. 12°
20′ E. of ¼-sec. post between secs. 32 and 33, T. 2 S., R. 19 W.,
and distant therefrom 1,380 ft., thence bearing S. 89° 50′ W. 100 ft.,
thence S. 0° 10′ E. 35 ft., thence N. 89° 50′ E. 100 ft., thence N. 0°
10′ W. 35 feet to point of commencement, lying and being in the
S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above
bearings being read from the magnetic meridian. Given to Albert
Gaines the following lands: On the N. by the Hot Springs hotel
property, the claim of W. H. Gaines, with a line bearing north 76°
30′ E. 50 ft.; thence on the east by Hot Springs creek, with a line
bearing south 13° 30′ E. 63 ft.; thence on the south by the claim of
Gordon, with a line bearing S. 75° W. 50 ft.; thence on the west by
Valley St., with a line bearing N. 13° 30′ W. 62 ft. to point of be-
ginning, including the office of A. K. Taylor, the entrance to
Gaines' cottage, and the building occupied by Mr. Lemen,
lying and being in the S. W. ¼ of the N. W. ¼ of sec. 33,
92 T. 2 S., R. 19 W.; also the following-described land: On the
north by the claim of J. J. Sutton, with a line bearing N.
79° 30′ E. 185 ft.; thence on the east by Valley St., with a line
bearing S. 10½° 20 ft.; thence on the south by the claims of Ellen
McMurray, with a line bearing S. 79° 30′ W. 185 ft.; thence on the
west by the section line bet. sect's 32 and 33, T. 2 S., R. 19 W., and
the claim of J. J. Sumpter, with a line bearing N. 10° 30′ W. 20 ft. to
place of beginning, lying and being in the S. W. ¼ of S. W. ¼ of sect'n
33, T. 2 S., R. 19 W., all the above bearings being read from the mag-
netic meridian. Gave to Augustus L. Stitt the following lands: On
the N. by the claim embracing the Garland house, with a line bear-
ing N. 60° 45′ E. 80 ft.; thence *thence* on the east by the claim of the
Peoria house and cemet-ry, with a line bearing S. 10° E. 140 ft.;
thence on the S. by Malvern road, with a line bearing S. 60 W. 30
ft.; thence on the W. by the Malvern road, with a line bearing N.
32 W. 140 ft. to place of beginning; also the following: On the N.
by the old Benton road, with a line bearing N. 60° E. 300 ft.;
thence on the east by the claim of Jos. Molen, with a line bearing S.
26° E. 160 ft; thence on the south by the cemet-ry, with a line bearing
S. 69° W. 180 ft. and N. 81° W. 110 ft. and S. 77½° W. 32 ft.; thence
on the west by an alley fronting the Peoria house, with a line bearing
N. 14° W. 50 ft. to place of beginning, lying and being in
93 the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all
the above bearings being taken from the magnetic meridian.
Sold to James Mingovan the following lands: Commencing at a
point S. 17° W. of centre subdivision stake on line bet. S. E. ¼ and

S. W. ¼ of sec. 33, T. 2 S., R. 19 W., and distant therefrom 500 ft., thence bearing north 24° W. 475 ft.; thence S. 770 ft., W. 300 ft.; thence S. 35° E. 420 ft.; thence S. 88° 45 E. 250 ft. to point of commencement, lying and being in the S. W. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian; all of which lands thus sold or given away they set up no claim to; that the following improvements are situate upon the premises claimed by your petitioners, namely, four hotels, fifty-three stores, saloons, and restaurants and two livery stables, one planing mill, one woolen factory and four dwelling-houses, and various stables, cribs, wells, fencing and other improvements usual about hotels, storehouses, livery stables, and dwelling-houses; that the same were erected by your petitioners and their agents and tenants under contracts made with your petitioners previous to April 24th, 1876; that they are of the value of one hundred and fifty thousand dollars.

Your petitioners further say that they claim to be the owners
94 of the said premises and entitled to again purchase the same from the United States upon the following grounds, to wit: That in 1839 Lydia Belding made application as the widow of Ludixocus Belding to the proper United States land office to purchase the whole of the southwest quarter of section (33) thirty-three, in township two (2) south and range (19) nineteen west of the fifth principal meridian, a copy of which application is hereto attached and made part hereof, marked Exhibit "C;" that said Lydia Belding some time after she had made said application transferred her right to her children, Maria Gaines, wife of Wm. H. Gaines, and Albert Belding, George Belding, and Henry Belding, a copy of which relinquishment and transfer is hereto attached and marked Exhibit "D," and after a full examination of said application to enter and purchase said quarter section of land, the Secretary of the Interior, on the 21st day of November, 1851, instructed the commissioner of public lands to permit the heirs and legal representatives of Ludovicus Belding to enter and purchase said lands; that in pursuance of said order from the then Secretary of the Interior the commissioner of public lands instructed the register and receiver of the United States land office at Washington, in the State of Arkansas, to permit the heirs and legal representatives of said Ludovicus Belding to enter and
95 purchase said quarter section of land, and, in pursuance of said instruction, Maria Belding, wife of Wm. H. Gaines, Albert Belding, Henry Belding, and George Belding, heirs and legal representatives of Ludovicus Belding, on the 19th day of December, 1851, made application in the name of said heirs and legal representatives of said Ludovicus Belding to the said register and receiver at said land office at Washington, Arkansas, which land office was the proper land office for entering said land, a copy of which application is hereto attached and marked Exhibit "E," and prayed to be taken as a part hereof, and upon said application the said register and receiver permitted said Maria Gaines, wife of Wm. H. Gaines, Albert Belding, Henry Belding, and George Belding to enter and purchase the southwest quarter of section (33) thirty-

three, in township two (2) south, range (19) nineteen west, and said heirs and legal representatives did then and there enter and purchase said quarter section from the United States, and did then and there pay the United States the sum of two hundred dollars for said quarter section, that being the maximum price charged by the United States for her public lands. Said two hundred dollars were paid and advanced by Wm. H. Gaines, the husband of said Maria Gaines, late Maria Belding, and upon the payment of said
96 sum of money said heirs and legal representatives did, on the 19th day of December, 1851, receive from B. F. Hempstead, the duly authorized receiver of the United States land office at Washington, Arkansas, a patent certificate for said land, a copy of which is hereto attached, marked Exhibit "F," prayed to be taken as part hereof. The original is in the possession of your petitioners and subject to the order an- inspection of the honorable board of commissioners.

Your petitioners respectfully show and aver that by virtue of said entry and purchase and patent certificate therefor they were by the laws of the State of Arkansas and the laws of the United States legally entitled to have the possession and control of the whole of said quarter section of land thus entered and paid for, subject only to the rights of the United States Government; that notwithstanding the legal title still remained in the United States after said entry and purchase and the issuance of said patent certificate, still they by reason of said entry and purchase and the patent certificate issued therefor acquired an equitable estate in and to said quarter section, an estate that by the laws of the State of Arkansas and of the United States *were* hereditable, devisable, and assignable, so your petitioners aver that from the 19th day of December, 1851, to and including the 24th day of April, 1876, they not only had a legal right
97 in and to the possession of the premises herein claimed, but they had a legal right recognized by the laws of the State of Arkansas and by the United States to devise, sell, or lease the whole or any portion of said premises; that your petitioners' possession, more particularly hereafter set forth, was not the possession of a trespasser or a squatter on the public lands, but was a peaceable, lawful, and rightful possession under the laws both of the State of Arkansas and of the United States, and that the sales and leases are not the sales and leases of a trespasser or squarter upon the public lands, but were the sales and leases of parties legally in possession, and your petitioners are advised and aver the fact to be that all sales and all leases made by parties rightfully and legally in possession have always been recognized, countenanced, and held to be valid by both the courts of the State of Arkansas and of the United States as between the vendor and vendee and lessor and lessee and their privies.

Your petitioners show unto your honors that when they paid for and received said patent certificate they were not in possession of any portion of said quarter section of land, and that your petitioners recovered possession *to* a large and the most valuable portion of the premises now claimed by your petitioners through the courts

of the State and the Supreme Court of the United States
98 on account of the legal right to the possession and control of the lands and premises which your petitioners now claim.

Your petitioners respectfully show that at the time of said entry the northeast quarter of said quarter section was unoccupied, and the same is now included in the Hot Springs Mountain reservation, except about three acres in the southeast corner of said northeast quarter, which three acres, more or less, had been in the lawful possession of your petitioners for more than twenty years previous to April 24, 1876; the same was previous to that time fenced and improved by your petitioners. Your petitioners make no claim to any of said northeast quarter of the said southwest quarter, except said three acres, more or less, on the south of said new reservation. The northwest quarter of said southwest quarter, when entered as aforesaid, was, with the exception of some of the hot springs that are now included in the Hot Springs Mountain reservation, in the possession of John C. Hale and Henry M. Rector and other parties. Your petitioners recovered judgment against John C. Hale for the possession of so much of said northwest quarter of said southwest quarter as was occupied by him, and said judgment was affirmed by both the supreme court of the State of Arkansas and
99 of the United States, and also recovered judgment for possession against Henry M. Rector and others for the portion of said northwest quarter of said southwest quarter occupied by them; which judgments were affirmed by the supreme court of the State of Arkansas and of the United States, and, after said judgments were recovered and affirmed as aforesaid, said Hale and said Rector filed a bill in equity setting up an equitable title to said land and enjoining the execution of the judgment at law; which last suit was still pending in the United States Supreme Court on the 24th day of April, 1876, so that your petitioners never in fact had actual possession of said northwest quarter of said southwest quarter, and they do not now set up any claim to the same. The southeast quarter of said southwest quarter at the time of said entry was unoccupied, with the exception of about ten acres thereof in the southwest corner of said southeast quarter, which was cleared and fenced and in cultivation and occupied by Abigal Sabin, who soon afterwards married a Mr. Du Pas. Your petitioners, being willing to pay said Abigal Sabin as well as all others for the improvements that they had made, bought out said Abigal Sabin's claim, and she delivered the possession to your petitioners, and your
100 petitioners have remained in possession and control of said field ever since, and were in possession of the same on the 24th day of April, 1876. Your petitioners, after purchasing and paying for said improvements, afterwards took actual possession of the remainder of said southeast quarter of the southwest quarter and cleared off and fenced and improved the same, and was in continued possession of the same for more than twenty years previous to the 24th day of April, 1876, with exception of a small portion sold off to other parties which is hereinbefore set forth, and with the further exception of a few lawless trespassers whose tres-

passes will be hereafter set forth. Nearly all of the southwest quarter of the southwest quarter at the time of said entry was in the possession of Abigal Sabin, Lawson Runyon, Abraham Kempner, Mrs. Belding, Mrs. Julian, Patrick Burke, James Sumpter, Richard Puckett, Edward Mills, Jacob Sweiptzer, Samuel and Oney Macklin, Harrison D. Flowers, and E. G. Malone.

Abigal Sabin had at that time about ten or fifteen acres in the southeast corner of said southwest quarter cleared, fenced, and in cultivation, which, together with land adjoining that in the southwest corner of the southeast quarter of said southwest quarter, made a field from twenty to twenty-five acres, and said
101 Abigal had in addition thereto a small field between said field and Hot Springs mountain of about two acres, and had a lot of houses and stables about where the present residence of your petitioners is, all of which your petitioner, Wm. H. Gaines, bought of said Abigal Sabin and for which he paid the sum of seven hundred dollars, as will more fully appear by reference to a copy of Abigal Sabin's or Du Pas' agreement and receipt therefor, which is hereto attached and marked Exhibit "G," prayed to be taken as a part hereof; the original bill will be produced in evidence to the court. Your petitioner, Wm. H. Gaines, also paid E. G. Malone for his improvements, a house upon the west side of Main or Valley street, where the St. Louis saloon now stands. Lawson Runyon, Mrs. Belding, and Mrs. Julian surrendered their claims without any suit. Abigal Sabin had other claims that she refused to sell or surrender. Your petitioners, always desiring to deal fairly with all men, offered to pay all of said occupants for their improvements, but they refused to sell to your petitioners or to surrender to them, and on the 5th day of January, 1852, your petitioners brought suits in ejectment against Richard Puckett, Harrison D. Flowers, Samuel and Oney Macklin, Abigal Sabin, Patrick Burke, and James Sumpter, and in 1853 and 1854 the further suits in ejectment
102 against Jacob Sweiptzer, Abraham Kempner, Edward Mills, and Jacob W. Parker; said suits included all the property on both sides of Valley street from the now Guinn house property to the Earl house property and a mill on the east side of Hot Springs creek, just south of the Malvern crossing. This property was at that early day all enclosed, occupied, and improved; it had upon it mills, dwelling-houses, stores, hotels, livery stables, blacksmith and wagon shops, and various other buildings. Your petitioners, being legally entitled to the possession of said property by virtue of said patent certificate, recovered judgment for possession of all of said property in the years 1856 and 1858. On the 3rd of March, 1856, the clerk of Hot Springs county issued writs of possession upon said judgments, and on the 6th day of March, 1856, the sheriff put your petitioner, Wm. H. Gaines, into the possession of the mill-house and other improvements and lands occupied by J. W. Parker, on and east of Hot Springs creek, a copy of which writ is hereto attached, marked "H," and prayed to be taken as part hereof, and just north of the now Malvern crossing, and on the same day said sheriff put your petitioner, Wm. H. Gaines, into the possession of a dwelling-

house and outhouses occupied by Richard Puckett, which house and grounds were where the Hot Springs hotel now stands, a
103 copy of which writ is hereto attached and marked "I" and prayed to be made a part hereof; and on the same day said sheriff put your petitioner in possession of all the houses, buildings, improvements, and inclosures occupied by Harrison D. Flowers, which property included what is now occupied by G. L. Wilson and Central house, a copy of which writ is hereto attached, marked "J," and prayed to be taken as a part hereof; and on the same day said sheriff put your petitioner, Wm. H. Gaines, into the possession of the dwelling-house and outhouses and inclosures occupied by Samuel and Oney Macklin, on the east side of Valley street, which property included the property now leased by Louis Bertsch and Wm. Staats, a copy of which writ is hereto attached, marked "K," and prayed to be taken as a part hereof; and on the same day said sheriff put your petitioner into the possession of all the property occupied by Abigal Sabin's blacksmith shop and wood shop and other buildings, on the east side of Valley creek, which property included the property since leased to D. P. Beldin, J. W. Kimball, R. H. Colvin, and J. L. B. Cayer by Wm. H. Gaines, and held and occupied by partee under said leases until and including April 24th, 1876, a copy of which writ is hereto attached, marked Exhibit "L," and prayed to be taken as a part hereof; and on the same day said sheriff put your petitioner, Wm. H. Gaines, in possession
104 of all the enclosures, storehouses, and dwellings occupied by Patrick Burke on both sides of Valley street, which property includes the property since leased to Bell and McCarthy, Herman Moscowitz, Philip A. Helfrick, J. W. Brantley, John Kubler, Green Payne, and H. C. Anderson by Wm. H. Gaines, and held and occupied by and under said lease until and including April 24th, 1876, a copy of which writ is hereto attached, marked Exhibit "M," and prayed to be taken as a part hereof; and on the same day said sheriff put your petitioner, Wm. H. Gaines, into possession of the inclosures, hotels, stores, and dwellings occupied by James Sumpter, on the west side of Valley street, which property includes the property leased to J. T. Chidester and Dr. O. A. Hobson and the open ground below Dr. O. A. Hobson's building and the ground occupied by Little and Jenkins on the west side of Valley street, and at the same time your petitioner had a judgment against said James Sumpter for one thousand dollars damages, and in consideration of your petitioner instructing the sheriff to return the execution satisfied the said Sumpter surrendered his lots and improvements he had possession of on the east side of Valley street to your petitioner and took a lease for the same, a copy of which writ is hereto attached, marked
105 "N." Said Chidester and Hobson held and occupied under said leases until and including April 24th, 1876, and on the — day of —— the sheriff of Hot Springs county put your petitioner, Wm. H. Gaines, into the possession of the lands, houses, and buildings occupied by Jacob Sweiptzer on the east side of Valley street, which property has since been leased by Fife and Houston and assigned to R. E. Allen and by Yonley & Bro., and was occupied on

said leases from the said — day of —— until and including the 24th day of April, 1876, a copy of which writ is hereto attached, marked "O," and prayed to be taken as a part hereof; so your petitioner- avers that on the — day of —— they not only had the legal but actual possession of the southwest quarter of the southwest quarter of said section thirty-three; that the same was fenced and improved at that date; that it had on it improvements worth the sum of five thousand dollars; that your petitioners kept possession and control of the same from that date until and including the 24th day of April, 1876; that they kept the improvements in repair, and in 1859 and 1860 caused to be built a theatre upon lands near Valley street just south of where the bridge now crosses the Hot Springs creek; also built other houses below the theatre, where the Cohn house now stands. Your petitioners aver that they have resided
106 on the premises claimed ever since 1852, a period of over twenty-five years. Your petitioners file herewith a map showing the improvements on the premises claimed in 1860, marked Exhibit "S." Your petitioners also aver that, being in the lawful, legal, and actual possession of said premises claimed in the year 1856, your petitioner, Wm. H. Gaines, on the 6th day of March, 1856, leased all the houses and outhouses, bath-houses, stables, gardens, lots, etc., to James Sumpter that had been occupied by James Sumpter before Wm. H. Gaines recovered the judgment and was put into possession by writ of possession heretofore referred to and compromise heretofore referred to, except one storehouse and two rooms then occupied by A. Kempner; said lands, houses, outhouses, and bath-house, stable, and garden are more particularly described in the lease, a copy of which is hereto attached, marked Exhibit "R," the original having been lost or mislaid, and which are also shown by map, showing old improvements, both of which are asked to be taken as a part hereof; and your petition-rs also, on the same day and year, rented one store-room and two rooms to A. Kempner, a copy of which lease is hereto attached, marked Exhibit "P," and prayed to be taken as a part hereof; said store and two rooms leased to Kempner occupied the ground now leased to J. T. Chi-
107 dester; and on the 8th day of December, 1857, your petitioners made the further lease of a part of the premises and improvements herein claimed to J. W. Parker, a copy of which lease is here*by* attached and prayed to be taken as a part hereof, marked Exhibit "Q," which lease included stables and buildings in the then forks of the road where the buildings commonly known as the Nichols, Vaughn, and Ducker building now stand; also a mill on the east side of the creek and north of the now Malvern crossing. All of said tenants occupied said premises under said lease until after the late civil war commenced, and said Sumpter renewed his lease until Hale was dispossessed by Gaines *et al.* Your petitioners aver that soon after J. W. Parker gave up possession of the premises between the then forks of the road they leased the same to John Sammons, who used a portion thereof for a blacksmith shop during the war, and it was reported to Maj. Gen'l Steele that John Sammons was in the habit of shoeing horses belonging to

guerillas, bushwhackers, &c., and a company of Federal soldiers were sent from Little Rock to Hot Springs to burn said shops and houses, and said shops and houses were burned in accordance with said instruction; and your petitioners are informed that afterwards various parties reported to Maj. Gen'l Steele, the Federal general commanding at Little Rock, that Mrs. Sumpter, the
108 widow of James Sumpter, was harboring, protecting, and feeding guerillas and bushwhackers in the houses that her husband, James Sumpter, had rented from your petitioner, Wm. H. Gaines, and Maj. Gen'l Steele sent another company from Little Rock to Hot Springs to burn said buildings, and said company did, in accordance with their orders, burn said buildings, together with the buildings that had been rented to A. Kempner, and which he had previously vacated; and they also burned at the same time the storehouse purchased of Malone. All of these buildings burned were the property of your petitioners. Your petitioners also aver that during the war the theatre building was destroyed and torn down by marauders.

Your petitione-s aver that during the late civil war there were very few persons that visited the springs for their health, and the buildings owned by your petitioners for the use and accommodation of visitors became old and dilapidated, and when the war closed your petitioners began to repair their buildings for the purpose of renting the same to the public, and in 1870, in order to accommodate the public and for the purpose of improving and making valuable their property that they had thus acquired, and that the Supreme Court of the United States had decided that they were
109 entitled to have possession of and which your petitioners honestly believed they were entitled to and would soon receive a patent for, they built, at an expense of twenty-four thousand dollars, the Hot Springs hotel, the first large, commodious, first-class hotel ever built in Hot Springs. They also built and purchased before the 24th day of April, 1876, several other buildings, used as offices, storehouses, restaurants, saloons, and dwelling-houses. Your petitioner- also refenced the premises herein claimed and cleared off a large portion of the ground claimed and put it into cultivation. Your petitioners also made large improvements to the houses in which they live. Your petitioners aver that the improvements that they have made independent of the improvements made by tenants of your petitioners, and which improvements made by tenants are by law also the improvements of your petitioners, as will be fully set forth hereinafter, cost at least the sum of sixty thousand dollars; and your petitioners show and aver that they have spent in defending the right conferred upon them to the premises claimed by the United States in issuing said patent certificate the sum of at least thirty thousand dollars in costs and lawyers' fees, and that they have paid about six
110 thousand dollars taxes to the State and county upon said premises; that your petitioners having purchased said premises from the United States Government, and honestly believing that they had a title to the same, and knowing that if said prem-

ises were sold for taxes their adversaries would buy it in and try to evict them upon such tax title, they always paid the taxes assessed against them on said premises promptly, and your petitioners aver that they had such confidence that they would get a patent to the whole of said quarter section of land, and had such a desire to have no cloud upon their title that they paid $416.00 taxes only — days before the Supreme Court of the United States declared that no one was entitled to a patent for said quarter section. Your petitioners aver that they have paid out for improvements, taxes, costs, lawyers' fees, and travelling expenses in attending court more than one hundred thousand dollars. Your petitioners have leased at various times a large portion of the property herein claim-, all which your petitioners herein set forth. Your petitioners aver that they
111 are the claimants and rightful occupants of said lands claimed; that they have caused all the improvements to be made that have been made thereon; that no one else have made any improvements thereon in their own right, but all buildings erected and improvements made by other parties than your petitioners upon said claim, other than those recovered in law by your petitioners, were made as the agents and tenants of your petitioners, under an express contract, and said buildings and improvements thus erected are now, in fact, in law, the buildings and improvements of your petitioners, and were the buildings and improvements of your petitioners on the 26th day of April, 1876, and were not the buildings of any one else, and all parties pretending to claim the same are estopped, both in law and equity, from setting up that they made the same in their own right, and are estopped, both in law and equity, from setting up that they occupied the respective premises claimed in any other manner than as agents and tenants of your petitioners; and your petitioners again aver that they are not only both the rightful claimants and rightful occupants, but that they are the only parties since 1852 that ever occupied the same in their own right; and they aver that George Belding, Albert Belding, and Henry Belding
112 hav*ing* leased, assigned, transferred, and set over to your petitioners all their rights in and to said premises. Your petitioners again aver that they had, under a patent certificate from the United States, legally, peaceably, and uninterruptedly occupied said premises for more than twenty years previous to and including April 24th, 1876, and that they were the only parties that were upon the 24th day of April, 1876, occupying said premises in their own right. So your petitioners aver that, having once entered and paid the United States for the land claimed, which money the United States still retains, and having owned and made the first improvements on said premises, and having occupied in their own right and improved and caused to be improved in their own right said premises continuously and peaceably for more than twenty years previous to and including April 24th, 1876, and having paid taxes upon said lands for more than twenty years, and the Supreme Court of the United States having repeatedly decided that your petitioners were legally and rightfully entitled to the possession of

said lands and improvements, one of which decisions of the Supreme Court of the United States, declaring that your petitioners
113 are entitled to the premises in their possession and to the improvements made and caused to be made as against everybody except the United States, has been rendered since the decision of April 24th, 1876, and which decision the Supreme Court of the United States say is in harmony with the decision of April 24th, 1876, that they are by the laws of the land in equity and good conscience alone entitled to again purchase said premises from the United States. Wherefore they pray that the commissioners shall adjudge to them the right to purchase the said premises from the United States and for other proper relief.

WM. H. GAINES.
MARIA GAINES.

GENERAL LAND OFFICE, *November 25th*, 1851.

GENTLEMEN: The papers accompanying your letters of the 18th and 24th March last in reference to the claims of the Hot Springs, in Arkansas, having been submitted to the Secretary of the Interior for his action on the legal point in the case, to wit, the reservation of the land by Congress, they were returned to this office for its decision on the respective merits of the pre-emption claims, irrespective of this question.

114 On the 26th day of August last this office returned the papers with its decision adverse to the claims of the heirs of John Percifull and in favor of that of the heirs of Ludovicus Belding, it agreeing with you both as to the establishment of the facts of cultivation in 1829 and possession on May 29th, 1830, and regarding the objections of the receiver, founded upon the opinion that those acts were performed as the tenant of another as not affecting the validity of the claim. On the 14th ult. this office received the opinion and decision of the Secretary of the Interior, dated the 10th of that month, in which he sustains the existing validity of the act of the 20th April, 1832, it not having been repealed or affected by any subsequent law, and that therefore none of the claims preferred for this land are of any legality. On the said 14th ult. an application was made by the attorney of the heirs of Belding for permission to make an entry of said claim in order that they may be placed in a proper position for the assertion of their rights hereafter in the courts, stating that of course under the decision of the Secretary they should not ask for a patent.

This was refused by this office, and an appeal from that
115 action taken to the Secretary of the Interior, who on the 21st inst. addressed this office a letter, a copy of which is herewith enclosed. In accordance with the directions of the Secretary therein contained you are instructed to permit the "heirs of Ludovicus Belding" to make payment for the S. W. qr. sec. 33, T. 2 S., R. 19 W., as containing 160 acres, and, in addition to the ordinary entry thereof upon your books and the return to this office, you will note the fact of its interference with the New Madrid location of Langlois, of its embracing land directed to be reserved by act of 20th of

April, 1832, and that said entry is permitted under the Secretary's decision of the 21st November, 1851. Similar annotations will be made on the receiver's receipt and the register's certificate.

Respectfully, your obedient servant,

J. BUTTERFIELD,
Commissioner.

Register and receiver, Washington, Arkansas.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *November 21st*, 1851.

SIR: Upon consultation with the Attorney General, and after full consideration of the application of A. H. Lawrence, Esq., attorney for the heirs of Ludovicus Belding, one of the claimants to
116 the Hot Springs of Arkansas, on appeal from your decision of the 15th ultimo, against permitting said heirs to make entry under the acts of 29th May, 1830, and 14th July, 1832, I have concluded that it will be proper and in accordance with precedent to permit them to do so, and you will therefore instruct the register and receiver accordingly. Said entry will remain subject to the same power of revision and control by the General Land Office and this department as may be lawfully exercised over any ordinary entry. The Government will still hold the ultimate power of protecting its own rights, while the claimants will merely be placed in a position to contest the adverse claims of others to the same land.

I am, sir, respectfully your obedient servant,

ALEXANDER H. H. STUART, *Secretary.*

The Commissioner of the General Land Office.

No. 6545.

LAND OFFICE, WASHINGTON, ARKANSAS,
December 19th, 1851.

We, Maria Gaines, wife of William H. Gaines, late Maria Belding: Albert Belding, Henry Belding, and George Belding, heirs and legal representatives of Ludovicus Belding, deceased, of Hot Springs county, Arkansas, do hereby apply to purchase the southwest
117 quarter of section thirty-three (33), in township two (2) south, of range nineteen (19) west, as containing one hundred and sixty acres, for which we have agreed with the register, acting under instructions from the Commissioner of the General Land Office bearing date 25th November, 1851, to give at the rate of one dollar and twenty-five cents per acre.

A. BELDING.
MARIA GAINES.
HENRY BELDING.
GEORGE BELDING.

I, William H. Etter, register of the land office at Washington, Arkansas, do hereby certify that the tract above mentioned is sold

as containing one hundred and sixty acres, as mentioned above, and that the price agreed upon is one dollar and twenty-five cents per acre.

WM. H. ETTER, *Register.*

NOTE.—In accordance with instructions, I note the interference of this entry with the New Madrid location of Langlois, of it embracing land directed to be reserved by act of April 20th, 1832, and that the entry is permitted to be made under the decision of the Secretary of the Interior of November 21, 1851, transmitted to this office by Commissioner of General Land Office under date of 25th November, 1851.

W. H. ETTER, *Register.*

REGISTER'S OFFICE, WASHINGTON, ARKANSAS,
January 19th, 1852.

118 I, William H. Etter, register of the land office at Washington, Arkansas, do hereby certify that the foregoing pages contain a true copy of the letters received from the Commissioner of the General Land Office, the application filed, and the annotation on the tract book in this office made under said instructions.

WM. H. ETTER, *Register.*

No. 6545.

RECEIVER'S OFFICE AT WASHINGTON, ARKANSAS,
December 19th, 1851.

Received from Maria Gaines, wife of William H. Gaines, formerly Maria Belding; Albert Belding, Henry Belding, and George Belding, the heirs and legal representatives of Ludovicous Belding, deceased, of Hot Springs county, in the State of Arkansas, the sum of two hundred dollars in full for the southwest quarter of section thirty-three (33), in township two (2) south, of range nineteen west, containing one hundred and sixty acres (160), according to the return of the surveyor general, at $1.25 per acre. According to instructions I note that this entry interferes with the New Madrid location of Francis Langlois on the same lands, and also it embraces lands directed to be reserved by the act of Congress of the 20th April, 1832, and is only permitted to be made under the de-

119 cision of the Secretary of the Interior, under date of November 21st, 1851, and the instructions of the Commissioner of the General Land Office, under date of November 25th, 1851, in accordance with said decision.

$200. B. F. HEMPSTEAD, *Receiver.*

Receiver's Receipt, December 19th, 1851, *for* $200, *Entrance Money for Hot Springs Quarter Section* (*S. W.* — 33, *T.* 2 *S.*, *R.* 19 *W.*), "*G.*"

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *December 23rd*, 1873.

I, W. W. Curtis, acting Commissioner of the General Land Office,

do hereby certify that the annexed copy of the tract book showing the Washington, Arkansas, cash entry No. 6545, of Maria Gaines *et al.*, is a true and literal exemplification from the records of this office showing that said entry has not been cancelled.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above mentioned.

W. W. CURTIS,
Acting Commissioner of General Land Office.

(Part of section), S. W. ¼; (section), 33; (township), 2 S.; (range), 19 W.; (acres), 160; (rate per acre, dollars, cents), $1.25; (purchase-money), $200.00; (name of purchasers), Maria Gaines, late Maria Belding; Albert Belding, Henry Belding, and George
120 Belding, heirs of L. Belding; (date of sale), 1851—December 19; (number of receipt and certificate of purchase), 6545.

Abstracts of Land Sold in the Land Office to —— from the — Day of —— to the — Day of the Same Month, Inclusive.

(When sold), 19th December, 1851; (number of receipt and certificate), 6545; (by whom purchased, name), A. Belding, Maria Gaines, H. Belding, and George Belding, Hot Springs, per act of 20th April, 1832; (tract purchased) (section *of* part of section), (S. W. quarter, whole of); (number of section), 33; (number of township), 2 S.; (number of range), 19 W.; (quantity acres), 160; (price per acre) (dollars, cents), $1.25; (purchase-money) (dollars), $200; (section 33), township 28, range 19 W.; reserved by the order of the President May 16th, 1839, for —— ——.

UNITED STATES LAND OFFICE,
CAMDEN, ARKANSAS.

I hereby certify that the above and foregoing is a true and full copy of the tract book in relation to section thirty-three, township two south, of range nineteen west, as the same remains in this office.

Given under my hand this second day of January, 1874; and I am unable to find in this office any instruction to this office from the Secretary of the Interior or from the Commissioner of
121 the General Land Office, at Washington, D. C., to cancel the above entry of Belding and Gaines; therefore said entry is not cancelled, upon the records in this office, the 13th day of January, 1874.

N. N. RAWLINGS, *Register.*

STATE OF ARKANSAS, }
County of Hot Springs, } *To wit:*

The State of Arkansas to the sheriff of Hot Springs county, Greeting:

Whereas on the second day of March, A. D. one thousand eight hundred and fifty-four, at our circuit court of Hot Springs county, by the consideration and judgment of said court, Wm. H. Gaines

and Maria Gaines, his wife; Albert Belding, Henry Belding, and George Belding recovered against Patrick Burke the sum of one hundred dollars, as well as the possession of certain lands and tenements situated in said county, namely, all that part of a certain tract or parcel of land known and described on the plat of the public survey as the southwest quarter of section thirty-three, in township two south of range ninetween west, described as follows, to wit: All that portion of said quarter section enclosed by the fence or enclosure now surrounding on three sides a certain tenement known as Burk's storehouse, including the land on which said storehouse is situated, the said store-
122 house being — what is known as Hot Springs valley, fronting on the west side of the stage road leading from the Hot Springs to Little Rock, and also a certain tenement now occupied by one Jacob W. Parker, including all the land enclosed by the fence now surrounding the same, and all the enclosures adjoining and connected with the same, the said last-mentioned tenement and enclosures being below and south of the point where the stage road crosses the Hot Springs creek west of said stage road and between that road and the road leading south from Hot Springs to the Washita, which was adjudged to them for their damages sustained in that behalf expended, and which costs are taxed and amount to the sum of twenty-two dollars and eighteen cents: You are therefore commanded that you forthwith deliver to the said Wm. H. Gaines and Maria Gaines, Albert Belding, Henry Belding, and George Belding possession of the premises above described; and you are further commanded that of the goods and chattels, lands and tenements, of the said Patrick Burke you cause to be made and levied the damages, together with costs aforesaid, and that you have the said damages and costs before our said circuit court, at the next February term thereof, on the second day of said term, and
123 you then and there certify how you have executed this writ.

In testimony whereof I, R. Striblong, clerk of the said court, have hereunto set my hand and (L. S.) affixed the seal of the said court this 23rd day of November, 1857.

R. STRIBLONG, *Clerk.*

I do certify that I have executed the within by putting the within-named Wm. H. Gaines in possession of the within-described property on the 26th day of November, 1857, as I am within commanded and the within named; and I further certify as to within-named damages of one hundred dollars, &c., I did not levy the same of the goods and chattels, lands and tenements, of said defendant Burk as I am within commanded because as to said damages I was enjoined and restrained by writ of injunction issued in that behalf by the clerk of Hot Springs county upon a bill filed by said Burk and others for that purpose this Feb'y 15th, 1858.

JOSEPH JESTER, *Sheriff.*

In the Matter of the Claim of Wm. H. Gaines and Maria Gaines, No. 784, Consolidated with Sundry Other Cases.

Monday, *February* 11*th*, 1878.

Forenoon Session.

Come now the claimants, William H. Gaines and Maria
124 Gaines, by their attorney, Hamilton Benjamin, and offer in evidence in support of their claim the following, to wit:

1. Certified copy of a transfer by Nancy Moore on the 3rd day of March, 1829, to Alexander L. Rogers, and assigned by said Rogers on the 5th day of December, 1829, to Wm. H. Moore, and on the 4th day of March, 1830, assigned by said Moore to L. Belding.

2. Certified copy from the records of the General Land Office of an application to the Secretary of the Interior by the attorney of the Belding heirs to purchase a certain quarter section of land in the Hot Springs Mountain reservation, together with the endorsement of the Attorney General in favor of the right of said Belding heirs to enter said land.

3. Instruction of the Secretary of the Interior, dated November 21, 1851, to the Commissioner of the General Land Office in regard to allowing said Belding heirs to enter said land.

4. The instruction of the commissioner of public lands, under date of August 20, 185–, in the form of a letter.

5. Copy certified by the register of the land office of the instructions issued by the Commissioner of the Land Office.

6. The application of the heirs of Ludovicus Belding to purchase and enter the southwest quarter of section 33, township 2 south, 19 west.

125 7. Receipt of the receiver of the land office, B. F. Hempstead, No. 6545, dated December 19th, 1851, for $200, for patent certificate for the southwest quarter of said section 33, township 2 south, 19 west.

8. Bill of sale of improvements of Abigail Dupas, late Abigail Sabin, dated March 25, 1852, to William H. Gaines.

9. Certified transcript of a judgment rendered in the Hot Springs circuit court at the February term, 1858, in favor of William H. Gaines *et al.* and against Jacob Sweiptzer.

10. Certified transcript of a judgment rendered in the Hot Springs circuit court on the 25th day of February, 1856, in favor of William H. Gaines and others and against Jacob Sweiptzer.

11. Certified transcript of a judgment of dismissal of appeal in the supreme court of Arkansas, dated February 18th, 1860, in case Wm. H. Gaines *et al. vs.* Jacob Sweiptzer, said judgment being the same rendered in the circuit court of Hot Springs county at February term of 1858.

12. Certified transcript of the record entry of the supreme court of Arkansas on appeal in said cause, dated July 6th, 1857, being in the case wherein judgment was rendered on the 25th day of February, 1856, in the Hot Springs circuit court.

126 13. Certified transcript of record entry in the Supreme Court of the United States in same case, December term, 1859.

14. Certified transcript of record in the supreme court of Arkansas in same case, dated in 1860.

15. Certified copy of record entry of the supreme court of Arkansas made on the 18th day of February, 1860, in the cause wherein judgment was rendered on the 25th day of February, 1856.

16. Certified copy of a judgment rendered on the 15th day of February, 1858, in the Hot Springs circuit court, in favor of Wm. H. Gaines *et al.* against Abraham Kempner, being the same incorporated with the petition of William H. and Maria Gaines, No. 784.

17. Certified transcript of the record entry of the supreme court in same case, appealed, made on the 18th day of February, 1860.

18. Certified transcript of record entry in suit in ejectment of William H. Gaines *vs.* Edmund Mills and Roxana Butler in Hot Springs circuit court, made February 25th, 1856.

19. Certified transcript of record entry of the supreme court of Arkansas in the case of Edmund Mills *et al. vs.* William P. Gaines, dated July 6th, 1857.

20. Certified transcript of record entry of the Supreme Court of the United States, on appeal of same case to that court, made
127 on the 9th day of January, 1860.

21. Certified transcript of record entry in the supreme court of Arkansas in same case, dated February 18th, 1860.

22. Certified transcript of record entry of the Hot Springs circuit court, in 1856, showing judgment against John C. Hale in favor of William H. Gaines and others, together with certified transcript of three record entries in same cause in the supreme court of Arkansas; also certified transcript of record entry in same case in the Supreme Court of the United States. (Messrs. John M. Harrell and W. P. Walsh enter their several objections to the admission of the foregoing transcripts in behalf of sundry claimants represented by them.)

23. Certified transcript of record entries in the supreme court of Arkansas in the case of Henry M. Rector *et al. vs.* Wm. H. Gaines *et al.*, together with a certified transcript of record entries made in the Supreme Court of the United States in the same cause.

24. Certified copy of record entry in the Supreme Court of the United States, December 2nd, 1859, in the case of William H. Gaines *et al. vs.* Loretta T. Hunter.

25. Certified transcript of judgment rendered in the Hot Springs circuit court on the 25th day of February, 1856, in favor of
128 William H. Gaines *et al. vs.* James Sumpter.

26. Writ of possession in case of Patrick Burke *vs.* Wm. H. Gaines *et al.* in the supreme court of Arkansas.

27. Certified transcript of record entries in the supreme court of Arkansas in the case of Loretta T. Hunter *vs.* Wm. H. Gaines *et al.*, July term, 1855.

28. Writs of possession, with the sheriff's return thereon endorsed, in case of Wm. H. Gaines *et al. vs.* J. W. Parker, Hot Springs circuit court, March 3rd, 1856, returned same day.

29. Writs of possession and sheriff's return thereon in case of Wm. H. Gaines *et al. vs.* J. W. Parker, in the Hot Springs circuit court, issued March 3rd, 1856, and returned March 11th, 1856; also writ of possession and sheriff's return thereon in the following cases, in all whereof Wm. H. Gaines *et al.* were plaintiffs, to wit: Richard Puckett, issued March 3rd, 1856, returned March 10th, 1856; Harrison D. Flowers, issued March 3rd, 1856, and returned June 16th, 1856; Samuel Macklin *et al.*, issued March 3rd, 1856, returned March 10th, 1856; Abigail Sabin, issued March 3rd, 1856, returned May 1st, 1856; Patrick Burke, issued November 23rd, 1857, returned Feb'y 15th, 1858; James Sumpter, issued March 3rd, 1856, returnable March 10th, 1856; all of which are certified by the clerk of Hot Springs county in 1858. (John M. Harrell and W. P. Walsh severally in behalf of sundry parties represented by them object to the admission of the above-described writs.)

129 WILLIAM H. GAINES, being first duly sworn, testified as follows:

Questions by his attorney, H. BENJAMIN:

1st Q. State your name, age, and residence.

A. Wm. H. Gaines; age, 80; residence, Hot Springs.

2nd Q. State to the commission in your own way the general history of this case.

—. My name is Wm. H. Gaines, 80 years of age, and have kept house here for the last 25 years. I am one of the claimants in claim No. 784. I married one of the heirs of Ludovicus Belding in the year 1849. I do not recollect what year it was, but think it was about the year 1851, I went to Washington to investigate all the claims on the Hot Springs property. I found Mrs. Belding had proved up a pre-emption in the year 1839, and came to the conclusion that she had the best title of the three claims I found in the Land Office. I employed A. H. Lawrence to investigate those claims, and came to the conclusion to prosecute the claim of the Belding heirs, and made application to the Secretary of the Interior to have that claim referred back to the district land office to be reproved up, clothing the other claimants with authority to examine, disprove, or invalidate the testimony if they saw fit. I do not recollect exactly what time we were in Washington, but think it was in the summer or fall of 1850. It was referred back to the district land officers to be reproved and investigated, and on the 22nd of January, 1851, Lydia Belding, widow of Ludovicus Belding, relinquished her right in favor of her children, the heirs of Ludovicus
130 Belding. The proof was taken up and well cross-examined by Rector and Hale. When the proof went to Washington her attorney made application to enter the land, which the Commissioner of the Land Office refused, and he appealed to the Secretary of the Interior. The Secretary of the Interior first decided against the entry, and we appealed to the Attorney General. The Secretary of the Interior in his letter to the Commissioner, after a full consideration and consultation with the Attorney General, came

to the conclusion that it was right and proper to admit the entry of the Belding heirs, and directed him to so instruct the district land officers in Arkansas. He did so instruct them, and the entry was made in the name of the four heirs, and I advanced the purchase-money, the sum of two hundred dollars, which was paid to the Government and which the Government still holds. It has never been repaid to the heirs. When I entered this I received a patent certificate in the name of the heirs for the southwest quarter of section 33, township 2 south, range 19 west, in the State of Arkansas. After getting the certificate of entry I came directly to the Hot Springs and purchased of Abigail Sabin all her improvements east of Hot Springs creek, which included all the improvements east of said creek except a small house occupied by Richard Puckette, where the Hot Springs house now stands, and a small cabin above the Puckette house and a cabin and mill near the now Malvern
131 crossing and an enclosure below the Malvern crossing and between the Malvern road and Hot Springs creek of Patrick Burke. Said Abigail Sabin's improvements consisted of a lot of cabins, cribs, stables, gardens, and lots where and near where I have since resided at the springs, and also included two springs on the mountain and a large field east of the New Malvern road and south of the now Gaines avenue, making in all 20 acres, more or less. These improvements purchased, with the exceptions named, were all the improvements that were on the south half of the southwest quarter of section 33, township 2 south, range 19 west, east of the Hot Springs creek. These fields were all enclosed with fences when I bought them, and had been in cultivation apparently for several years, and have been occupied by me and kept fenced ever since—from the time of said purchase up to and including the 24th of April, 1876—and a large portion of the time I have had them in cultivation. At that time there was no one living on this quarter section, east of the improvements I bought of Mrs. Sabin, and continued to be none until after the close of the war. I took charge of the land and prevented people from cutting timber as long as I could keep them off, and paid taxes on it from the time it was entered to the date of the decree. The improvements that were excepted were right along on the creek bank. The west side of
132 Hot Springs creek, at the time of making this entry, was in the possession of Lawson Runyon, Abraham Kempner, Mrs. Belding, Mrs. Julian, Patrick Burke, James Sumpter, E. G. Malone, Edmund Mills, Harrison D. Flowers, Abigail Sabin, Sam. and Oney Macklin, and Jacob Switzer, and on the 5th of January, 1852, in the name of myself and Belding heirs I commenced suits of ejectment in the Hot Springs circuit court against Richard Puckette, Harrison D. Flowers, Patrick Burke, Abigail Sabin, James Sumpter, and soon thereafter I commenced suits against Jacob W. Parker, who was in possession of the mill and cabin, and Edmund Mills, James Switzer, and Abraham Kempner. I recovered judgment in the first lot of cases commenced in 1856, and writs of possession were issued on said judgments and I was put in possession of the property. I afterwards recovered judgment in the other cases and was put in posses-

sion of the property, most of it on the 6th of March, 1856. I continued in possession of said property until dispossessed by the decision of the Supreme Court of the United States, April 24th, 1876. During that time several parties tried to jump my possessions, but I have always applied to the court and dispossessed them. The improvements claimed by E. G. Malone I purchased soon after I bought out Abigail Sabin. I repaired the cabins, lived
133 in them three or four years, and then built my dwelling-house that my family has resided in and occupied up to last December. Soon after I purchased of Abigail Sabin I enlarged my fields and repaired and built new fences and took in ten or twelve acres more of ground on what is now the north side of Gaines avenue. Soon after I was put in possession by the writs above named I commenced building new hewed-log cabins. I built three double log cabins and afterwards built one more log cabin joining the property that had been occupied by Mrs. Julian. On the west side I enclosed it all with a good fence, on the east side of what is now Valley street, commencing near the bridge that crosses the creek south of the Hot Springs hotel and extending down to about two feet into the now Cohn building. Mr. Turnbull put up a theatre one hundred feet long, forty feet wide, and seventeen feet high. George Belding and I purchased this theatre of Turnbull in 1859, and George Belding afterwards sold his part of the house to me, and below the theatre, the same fall, I built a large room for a dining-room, and put up two good size log rooms in front of the dining-room with a hall between them, about six feet south of the south end of the theatre, and cut the theatre up into, I
134 think, thirty-two bed-rooms, afterwards making a two-story house for the purpose of boarding-house or hotel. About this time I enclosed all below the property that had formerly been occupied by Switzer between the street and the creek, west of the creek, down to the section line, and made a kiln of brick there. I made no other improvements of importance until after the close of the war. At the beginning of the war, including the houses that I purchased and recovered by suits of ejectment and built myself, I had twenty houses, one mill, one house used for a hotel, and one of the twenty houses was a row of houses of ten or eleven rooms that I / recovered from Sumpter. During the war the hotel house, formerly the theatre, was destroyed by marauders and trespassers, so that I had to tear down the remnants to save what lumber there was. During the war the improvements that I had recovered of Burke that were on the east side of the road where the Nichols, Vaughn, and Ducker buildings now stand were destroyed by fire; they were burned by Federal troops. These troops also burned the row of houses recovered from Sumpter, and also the house that I purchased of Malone. In the spring of 1865 Mrs. Gaines fenced in nearly all the ground recovered from James Sumpter east of the
135 now Sumpter house. The houses formerly upon this ground were burned during the war. I had a number of the old houses that were left standing repaired so as to make them tenantable. Soon after repairing the old houses I caused to be fenced up

all the property between the Malvern road and Hot Springs creek down to the line to be used for a brick yark, and had the fences repaired for the fields that I had before the war, and cultivated and occupied the same until after the decision of April 24th, 1876. In 1870 Mrs Gaines, one of the petitioners, built the Hot Springs hotel, which was the first fine hotel ever erected in Hot Springs. It cost about twenty-four thousand dollars and was the principal and leading hotel until the Arlington was built. The same year I built the house now held, under a lease from the receiver, by William Staats and also claimed by him before this commission, the said house being situated the second house below the Malvern crossing, on the east side of Valley street. This house cost five hundred dollars. In 1871 I built the barber shop north of the Hot Springs hotel, which cost about one hundred and fifty dollars. I also built the office south of the Hot Springs hotel now occupied by
136 Dr. Taylor, which cost about four hundred dollars. I also, the same year, built the bakery, the first building south of Dr. Taylor's office, which cost about four hundred dollars. Soon after this year I built the house south of the now Malvern crossing, which is now held under a lease from the receiver and claimed by Rachael Bertsch. I next built the house and stables south of the now Cohn house, and which are now held, under a lease from the receiver, by Thall and others. These buildings cost about six hundred dollars. The next building south of the stable I bought from Cloyes. This building is now held by Julius Breytie under a lease from the receiver, and is also claimed by Breytie before this commission. I soon after bought of Leeson the house on the west side of the street just south of the house of Sutton, the cost of which is estimated at a thousand dollars. I also built three cottages north of the cemetery, which cost six hundred dollars apiece. I also built two storehouses south of the Garland house, which cost about nine hundred dollars. I also built two cottages on the Malvern road nearly west of the cemetery, one costing six hundred dollars, the other three hundred. I also bought a house of N. H. Cloyes south of these two cottages on the Malvern road for three hundred dollars. I also bought a blacksmith shop on the Malvern road. I also bought a stable of Mr. Bell on the
137 Benton road. In the year 1874 I fenced all north of the Benton road to near the east line and to what I supposed to be the east line and north on the east line away up into the mountain and thence west to include the hot springs obtained from Abigail Sabin. This fence made a complete enclosure of all the ground now claimed by me north of the Benton road. This was a good, substantial fence, except some portion of the mountain, where it was impossible to make a first-class fence. In addition to buildings put up by the petitioners in person I made fifty or sixty leases or contracts to various persons to put up buildings on the ground claimed and occupied by me. In a large portion of these cases my old buildings had to be torn away to make room for better buildings. I enlarged my residence by building eight rooms, which cost me about sixteen hundred dollars. I have resided continuously

upon the property claimed in the petition ever since the year 1852 until December last, a period of about twenty-six years, and during all that time the petitioners are the only ones that have occupied this ground as their own except a few negroes in the southeast corner of the quarter section, who have been holding adversely to your petitioners. With this exception there has been no one since I recovered these lands, in the year 1856, who has lived upon any portion of it and claimed or occupied the same as their own.

138 Your petitioners are and have been all this time the sole occupants in their own right. All other parties, with the exception of the negroes referred to above, that have lived upon the same have done so under contracts with your petitioners, recognizing and treating them as landlords. During all this time I believed that I had the title to said lands and have paid taxes upon said lands ever since I entered and paid for the same at the United States land office. I know of no one else that has paid any taxes upon said lands or ever pretended to give them for assessment. I so strongly believed that this property was mine and that I would get a title to it that I paid the taxes for the year 1875 only a few days before the decree of April 24th, 1876. I have been a *bona fide* occupant of these lands for more than a quarter of a century, and during that time I have exercised and had the same control over the lands claimed that any person could or would exercise over lands that they held a patent for from the United States. When A. O. Morgan, the United States receiver, took possession I was the first man on the reservation to turn over my property to him. I turned over all property held by myself, both that held in person and that held by my tenants.

139 Cross-examined by JOHN M. HARRELL, representing No. 1, claim of Algernon S. Garnett, M. J. Towle and wife, James O. Ducker, Rachel Burch, and sundry other conflicting claims:

3rd Q. You say your fence north of the Benton road fell short of the section line?

A. Yes.

4th Q. How far?

A. I cannot say exactly.

5th Q. Did it go beyond the ground of James O. Ducker?

A. Yes; it enclosed that ground.

6th Q. You use the word "enclosed," understanding what it means, and deliberately, do you?

A. Yes; I had it all under fence.

7th Q. Did you not merely build a line of fence between him and the road and stop there?

A. I enclosed every inch of that ground.

8th Q. You had Mr. Ducker under arrest for trespass about 10 days, had you not?

A. Yes; I had some trouble with him. He broke my fence down.

9th Q. Did you take the lumber that he had on that ground and appropriate it to your own use or cause it to be appropriated?

A. No, sir.

10th Q. What did you do with the posts he put there?

A. I never had anything to do with them. I do not know who removed them. I think I stopped him by injunction.

140 11th Q. How many buildings do you say you had possession of just before the war?

A. About 20.

12th Q. Where did they stand?

A. The theatre building stood south of the Hot Springs hotel, for one. I have mentioned all these places already in my testimony.

13th Q. They were destroyed during the war by fire?

A. Yes, sir; the theatre was getting destroyed by their tearing doors down, and so on, and there was a great deal of good lumber in it, and I tore it down to save it from being destroyed.

14th Q. Which of the buildings were not destroyed?

A. My dwelling-house was not. The church was not destroyed. Above there there were some few cabins along where the Citizen's stable is, from there down to the St. Louis saloon, that were destroyed. The buildings that I put up previous to the war, along down the lower end of the valley, were not destroyed. On the west side of Valley street there were 8 log cabins that I built that were not destroyed. There were three double ones and one with two rooms in it, making eight rooms in all. They commenced down about where Smith's mattress-house is and ran up north. They were about 20 feet apart.

Q. Are those buildings there yet?

141 A. No, sir; they were torn down in order to lease the ground. Some of them fell down, and I may have hauled them off or given them away. They ran up to the new Malvern crossing, and the north one a little higher, maybe.

Q. When did you fence in from the Malvern crossing down to the section line?

A. In 1858, after I built the log cabins. I fenced along in front of them, leaving a space between the fence and the cabins of 8 or 10 feet. It was plank fence; it was burnt up and torn away during the war.

Q. Did that fence form an enclosure?

A. Yes.

Q. Was there another fence in the rear of the house?

A. Yes; there was a rail fence between the Sumpter ground and the Burke ground.

Q. Whose property did you claim that to be in 1858—those cabins and that fence?

A. I was acting as agent for the Belding heirs, but I claimed the house that I put up as my own. They were put up and purchased with my own money.

Q. Those 20 houses that were standing there just before the war you claimed as the property of the Belding heirs, did you?

A. No, sir.

Q. Which of them did you claim as your individual property?

142 A. My residence and those log houses that I built.

Q. Did you claim the old theatre?

A. Yes; and the log houses south of the theatre. I built them—that is, on the east side of Valley street.

Q. State what you think those houses and all the property claimed by you was worth at that time.

A. The theatre cost me $1,700; the log houses south of it—I worked on them with my own hands—they are, all together, worth about $500, on the theatre side of the street.

Q. What were those buildings that were on the other side of the street worth, from the mattress-maker's up?

A. Labor was cheap when I built them; they were simple log cabins, one room, 16 or 17 feet square.

Q. Which was the most valuable improvement you owned at that time?

A. The dwelling-house.

Q. Which next?

A. The theatre.

Q. Did you own any other valuable improvement at that time besides the log houses, the theatre, and the dwelling-house?

A. Yes; the field that I bought of Mrs. Sabin. It is south of Gaines avenue—the biggest field. The north line of the fence

143 ran in Gaines avenue; on the west it ran out to the Malvern road; on the south to the line of the southwest quarter of section 33. The east line of the field was out somewhere beyond, where a colored man named Thal lived at that time. It was much bigger than it is now, because part of it ran down into section No. 4. I think more than half of it was in section four. It included where that house was and several other lots up there. My purchase included lots around my present dwelling-house and a little field, in woods, where the cemetery is. I fenced in 10 or 12 acres north there and drew the fence in so as to turn over to Mrs. Sabin what was outside of what I entered. I drew the line in on the east to make it more square. I fenced in what lies north or Gaines avenue a year or two after I bought it, as soon as I knew where the lines were.

Q. Was it enclosed when you bought it?

A. It was.

Q. What did you consider it worth?

A. I paid $700 for it. I consider it worth all of that.

Q. What other valuable property did you own at that time?

A. I have stated all about that. I had a kiln of brick made on the east side of Valley street, between that and the creek.

144 That was the first brick-kiln I had made; that was made before the war. After the war I contracted with Cloves to make brick for me and gave him a percentage of what brick he made. On that thin strip of ground, where the Cincinnati house burned down and where the Surprise house stands, was made two kilns of brick, and that was done since the war.

Q. Which was the property of the Belding heirs?

A. I have a transfer from them; it is all mine.

Q. Were those transfers made prior to your petition in bankruptcy?

A. Very recently; since they have been hunted up to give me trouble.

Q. Did you put in any of this property in your petition in bankruptcy?

A. I did not. I consulted my lawyer, Judge Watkins, who knew all about it, and he said it should not go in. I went through bankruptcy and was honorably discharged seven or eight years ago.

Q. When did you file your petition in bankruptcy?

A. I cannot recollect the date.

Q. Did you transfer it then to the Belding heirs?

A. No, sir.

Q. You did not see proper to claim it when you went into bankruptcy?

A. I did not.

Q. You bought certain improvements that were erected?

A. Yes.

145 Q. Were they within these enclosures that you speak of?

A. Yes; all except the part of Mrs. Sabin's field, which I gave back to her.

Q. In whose right do you make your claim now to this property?

A. In the right of Maria Gaines and myself.

Q. Did the Belding heirs file any petition?

A. No, sir; I am controlling it all myself.

Q. Where was this Cloyes house that you bought?

A. Part of the brick yard there.

Q. Where was the blacksmith shop?

A. It is there now. I bought it from Cloyes. It was considered in the $300. There were some improvements that he had put on it that I bought of him. It was considered in the $300.

Q. You say that since you recovered these lands, in 1856, no one has resided on them except yourself or owned them?

A. I do not think that anybody has ever claimed them in their own right as we have.

Q. What lands are referred to in your petition?

A. The southwest quarter of section 33, township 2 south, — 19 west.

Q. How do these people happen to be there unless they have resided on it?

A. They were not there in their own right.

Q. Some of them have built improvements upon it, have they not?

146 A. Yes.

Q. And without your assistance?

A. They generally leased the ground from me.

Q. Did M. W. Towle lease any from you?

A. He made a bargain with my agent to lease it. I have no written lease.

Q. Did you contribute any money to the building of the improvements erected on that ground by Mr. Towle or give him any assistance of any kind?

A. No, sir.

Q. Who built the Salmons house, near the Methodist church, that Mrs. Burch lives in?

A. Allen Salmons.

Q. Did you agree with him to let him have that 20-feet alleyway leading down from his house?

A. No, sir; I might have agreed to let him use it. He agreed that he would keep off of the quarter section, and I believe he did. I do not think it is on that quarter section at all.

Q. The new Valley house, now used as the court-house, did you contribute any money or any assistance to the erection of that building?

A. Yes, sir; I loaned the old man fifty dollars, and he said he wanted to put it in that building.

Q. Did you know him very well?

147 A. He had been a very good tenant and paid punctually and he leased the ground. I have his note for $50 for the money I lent him. He wanted to keep it, and I told him to keep it awhile.

Q. His note is out of date, is it not?

A. I do not think it is.

Q. That is all you had to do with erecting that house?

A. Yes.

Q. The house of Mr. Ducker, the three-story house on the corner of Malvern crossing, did you contribute money or assistance to the erection of that house?

A. No, sir.

Q. The stable that Gillis had and sold there, did you contribute any money to build that or any means of any kind?

A. Yes; I furnished all the lumber.

Q. You have stated all the buildings you have erected since the war, have you?

A. Yes; I aimed to name every one that I erected. I show vouchers for the building and leasing my house to Burch, and so on. Then it was turned over to the receiver. He has held possession. Those are the houses I built myself. The Gillis property was built by me under written contract.

Q. Did you make any distinction in your testimony between the buildings you erected and those built by old tenants?

148 A. I have not said a word about my tenants' building; only that I had 50 or 60 tenants who leased. I described my own buildings.

Q. You said in your testimony that you were the first man that turned over that property to the receiver. How did you turn it over?

A. I had an interview with Mr. Morgan, in which he told me that he would live up to the instructions of Judge Gray, and that my tenants should have the preference in the right to lease. I thought

maybe I could get a chance to lease my houses. I tried him the second time, and he was very positive that my tenants should have the preference. I told him I would throw no obstacle in his way, and that if he would send his clerk around with me we would go around, and I would show him every house I owned and tell him who lived in it and turn them over to him, which was done. Captain Peck went around with my son, who was attending to the collection of the rents for me, and he turned the houses over to him. My tenants then leased from the receiver. The houses were not turned over to the tenants.

Q. The receiver preferred to lease the ground to the occupants?

A. Those were his instructions.

Q. What did you lease from the receiver?

A. I first leased my dwelling-house—my wife did.

149 Q. How much property did you lease in connection with your dwelling-house?

A. There was a little difference between Mr. Morgan and me. I got him to make out the application himself in his own handwriting. I meant it to include all my lots, but he never would give me the lease. I paid the monthly rent that he put on my dwelling-house—all that was under fence. I told him I wanted to take a lease for the whole of it, but he did not want to give it to me, but he never leased it to anybody else. People came to me to lease from me, but I never had any transaction since, except to sell Mr. Wilson a stable. I do not know whether it was a few days before the decision of the Supreme Court or a few days afterwards. I disclaimed owing anything till the act of Congress was passed giving me a show for my possessions there.

Q. You leased your residence at first?

A. I rented it. Afterwards, as the tenants went away, some cottages that I had I offered to Mrs. S. H. Stitt and let her lease them. At the north end of the cemetery there were three cottages and 2 store-rooms, and it may have included this Surprise house. I am not sure but there were six in all. They were on the east side of the creek. I leased those; then I leased three houses to

150 Albert Gaines, Dr. Taylor's office, and the Smith house, on the west side of Valley street, the two cottages and the Cloyes house to Mrs. Williamson.

Q. What two cottages were those?

A. They were the two lying between the Malvern road and Hot Springs creek, opposite the cemetery. Those cottages Mrs. Williamson, my daughter, leased, at my request, from the receiver. They were given to her. I bought a little shanty that was back of the Burch house; that was his own transaction. I think he leased that from the receiver.

Q. You say you have filed in this case the transfer from the Belding heirs to yourself?

A. I will do it. I have the conveyance of recent date. One was signed in Texas and the other here. Albert Belding signed his, George signed his, and Henry signed his. It has been within the last three months.

Q. Your plat shows how far your line runs, does it?
A. Yes; it includes Wilson's stable, the Hot Springs hotel, and the barber shop this side.
Q. Did you pay any taxes on this property in your own name?
A. No, sir; in the name of the Belding heirs.

Questions by Mr. CURL, representing Sumpter, Kemper, and other claimants:

Q. State if you acquired any possession west of Hot Springs creek originally by virtue of purchase, or was it all by virtue
151 of the Beldin heirs' certificate of entry.
A. I bought the Malone house, that covered the ground where the St. Louis saloon now stands, in 1852, soon after I bought Mrs. Sabin's ground.
Q. Any others?
A. No, sir; not on that side.
Q. Then the balance of your possessions on that side were acquired by virtue of the certificate of entry of the Belding heirs?
A. No, sir. I took possession of the vacant ground and built those log cabins.
Q. My question is if the balance of the possessions you acquired on the west side of the creek were acquired by virtue of the entry of the Belding heirs.
A. Yes; except that there was a good deal of vacant ground that I took possession of there.

Re-examined by Mr. BENJAMIN:

Q. State whether some of the ground occupied by Mr. Runyon and Mrs. Beldin was not turned over to you by agreement without suit.
A. Yes; that was vacant ground. Mrs. Beldin had a house this side of the well and Runyon had a cabin south of the Kempner property there.

And further saith not.

FEBRUARY 11TH, 1878.

In the Claim of WM. H. and MARIA GAINES, No. 784—Continued.

ROBERT B. RUNYON sworn and examined.

152 Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.
A. Robert B. Runyon; age, 26, and reside at Hot Springs.
Q. How long have you resided at Hot Springs?
A. I was raised here.
Q. Are you acquainted with Wm. H. Gaines and wife?
A. Yes, sir.
Q. State whether you know anything about the possession that Lawson Runyon had upon this quarter section, where it was, and who he was.

A. He was my father; he did have possession several years ago.

Q. Where was it?

A. It was in the lower end of the valley, at the foot of what is called Gwinn hill. There is a house on that particular spot now, and, as well as I can recollect, it is fenced up.

Q. North or south of the church?

A. North of the church.

Q. Who did he turn that possession over to?

A. Mr. Gaines.

Q. Who has had possession and control of it since that time?

A. Mr. Gaines, I think—Wm. H. Gaines.

Q. You have known it all the time?

A. Yes, sir; have never known any one else owning or control-ing it.

Q. State what street it comes up to.

153 A. It comes up to the main street, Valley street, and runs up on the hill to the section line.

Q. About how many feet upon the street was it?

A. I suppose it is 60 or 75 ft.

Q. State whether Mrs. Beldin had a claim.

A. She had a claim this side of that.

Q. State whether you know of Abraham Kempner ever having any claim.

A. Yes, sir; I know of his claim there; it is adjoining that same lot and fronted on Valley street.

Q. Any house upon it?

A. Yes, sir.

Q. How far up did it run?

A. Some 100 ft., I guess.

Q. State whether you know to whom Kempner turned it over.

A. I think Mr. Gaines has had possession of it. A. I don't recollect; it was a good many years ago.

Q. And since that time he has had continuous possession?

A. Yes, sir.

Q. Do you know anything about the claim of Mrs. Beldin?

A. Yes; she had a claim right this side, commencing at the well; it fronted on the Valley street and ran back to the section line.

154 Q. How many feet in front?

A. Probably 125 ft.

Q. Who has been in possession of that claim for the last ten years?

A. William H. Gaines.

By Com. COBURN:

Q. What improvements are on it?

A. When Mrs. Belding owned it there was a frame house on it of some four rooms; the front of it was weatherboarded; there was a well between that and Kempner.

Q. Do you know anything about Mrs. Julian having any possessions on that street?

A. I recollect about the house very well; it is somewhere just below what is known as the Valley house, where Capt. Toale's office is now; was a small log cabin on it 16 by 18 ft. square. Some time afterwards Mrs. Gaines built an addition to it—another room. This was after Mr. Gaines got possession of it. He made a double log cabin of it.

Q. State whether you knew anything about Patrick Burke having any possession.

A. That is before I recollect. I know where they were.

Q. State who has been in possession, as near as you can recollect, of the ground.

A. Mr. Gaines.

Q. Any house on it?

A. Yes, sir; a great many houses on it now.

155 Q. Any there before the war?

A. Yes, sir.

Q. Who had control of those houses?

A. Major Gaines. No one else set up any ownership to them, to my knowledge.

Q. State whether you know anything about the possession of James Sumpter at one time; and, if so, where it was.

A. It was situated about opposite the lower corner of the Hot Springs hotel; on the opposite side of the street—the houses.

Q. That extended up how far?

A. As far as Dr. Hobson's office; somewhere near there.

Q. Who was above it?

A. Mr. Kempner had a store above it, and also Mr. Beldin above there.

Q. What became of the improvements on it?

A. They were burned down during the war, and have never been rebuilt since. Some few houses have been put up on it, but most of it has been vacant since.

Q. Do you recollect anything about Major Gaines being put in possession of it?

A. Yes, sir.

Q. Do you recollect whether Kempner claimed his store or Major Gaines?

A. I think they belonged to Major Gaines and was rented to Kempner. He kept store there several years.

Q. Where was George Belding's storehouse?

156 A. About where the livery stable is now; or, rather, where the St. Louis saloon is.

Q. Do you know anything about the possession of Mills and Butler?

A. Yes, sir; I recollect that the Mills store was right where the Sentinel office is—Goode's drug store.

Q. Did Mrs. Butler have any house there?

A. Her house was the next house below the printing office.

Q. Do you know anything about Major Gaines having possession there?

A. Yes, sir; he had possession there since I can first recollect.

Q. State whether he has had control and acted as owner of it since that time.

A. Yes, sir; he has.

Q. Anybody else claim to own it or control it?

A. There may be somebody who claimed it, and probably may have controlled it some.

Q. State where the Barksdale possession was.

A. That was just above the printing office, about where Wilson's stables are.

Q. State whether you know where the Switzer property was.

A. Yes, sir; right where a man by the name of Allen is living now. The house is standing yet—the back part of it.

Q. Did he have an enclosure there?

157 A. Yes, sir. I suppose there was a right smart enclosure of some 20 ft. front; had a garden spot there; it run back to the creek.

Q. Do you know anything about Sam. and Oney Macklin having a claim?

A. Yes, sir; Oney was right where Bertsch's saloon is now. It fronted on Main street and ran back to the creek.

Q. State whether Switzer's claim did not join Oney's claim.

A. I think it did.

Q. And extended down below?

A. Down below the Allen house.

Q. State whether you know anything about this property being enclosed between the creek and the Malvern crossing and further down to the section line at any time and being used for any purpose.

A. It was enclosed and there was a brick yard upon it at one time. It has been enclosed ever since I can first recollect. My father cultivated a portion of it himself.

Q. Who was using it afterwards as a brick yard?

A. Mr. Lecroix, but he was working for Mr. Gaines.

Q. Do you recollect anything about the possession of Sabin?

A. No, sir.

Q. Do you recollect anything about the theatre building?

158 A. Yes, sir; it was just directly below the Hot Springs house and extended down to what is known as the Cohen house now and back to the creek.

Q. State whether there was any log house there.

A. There was some log houses below there—just below where the Cohen house is now.

Q. Can you describe anything about the mill on the other side of the creek?

A. I just recollect about it.

Q. Do you know anything about what improvements were on the east side of the creek between the Malvern road and — before the war and who had possession of them?

A. There was a log cabin there belonging to Mr. Gaines, and a colored woman lived in it, right at the crossing.

Q. Any other improvements below there on the same side that you recollect of?

A. Not that I recollect of.
Q. Was there not a house that Abe Peters lived in?
A. Yes, sir; below the creek—just below the corner.
Q. Was there any fence up?
A. That lot was all fenced up.
Q. State whether you know anything about the old Sabin field and fence and where it ran.
159 A. It started from the Malvern street —, where the cemetery stands now, and ran back to near the depot.
Q. And where did it go then?
A. Then from there up to the foot of the mountain.
Q. You say it ran east to near the depot?
A. Yes, sir; and then north, or rather northeast.
Q. And ran up to what place on the mountain?
A. Up to the line.
Q. And that was all enclosed?
A. Yes, sir.
Q. And from this east side of the fence it was fenced up to the residence of Major Gaines?
A. Yes, sir.
Q. And divided up into different lots?
A. Yes, sir.
Q. Who lived there at that time where Major Gaines' old residence is?
A. He lived there.
Q. How long has he lived there?
A. Ever since I can recollect.
Q. State whether he has been the ostensible owner and had control of those premises fenced up that you have described here on the street.
A. Yes, sir; he has.

Cross-examination.

By Mr. HARRELL:

Q. What is your father's name?
A. Lawson Runyon.
160 Q. How old are you?
A. Was 26 on the 6th of January.
Q. You have known Major Gaines all that time?
A. Yes, sir.
Q. You have been living here all that time?
A. Yes, sir.
Q. And Major Gaines was the one who had possession of these improvements you have described?
A. Yes, sir.
Q. Did you ever hear of the Beldin heirs?
A. Yes, sir.
Q. What improvements did they have?
A. The same improvements.
Q. Were they Major Gaines'?

A. They belonged to the heirs.

Q. How do you know?

A. That has always been my understanding. He has always had rental of them. That was what I was alluding to.

Q. What became of these improvements?

A. They were torn down and moved away for more substantial buildings.

Q. While he had control of them?

A. I think so.

Q. Who put up the buildings on them?

A. Different parties leased the ground. He also built some.

Q. Which ones did he build and which the other parties?

A. I don't know. I never paid much attention.

161 Q. Do you know who the Belding heirs were, how many, and their names?

A. George, Albert, Henry, and Maria Gaines.

Q. Where is Albert Beldin?

A. I don't know; Henry is in Texas; it has been three years since Albert was here; Henry was here about a year ago, probably longer.

Q. George Belding lives here?

A. Yes, sir; and Mrs. Gaines.

Q. Is George Belding's name in this claim of Major Gaines'?

A. No, sir.

Q. He has a separate claim?

A. Yes, sir.

Q. Are those heirs of age?

A. Yes, sir; all of them. Albert is over 40, and I think Henry is somewhere near 40; I do not know how old George Beldin is; he must be 38 or somewhere along there.

Q. Do you know Mrs. Maria Gaines?

A. Yes, sir.

By Mr. WALSH:

Q. Can you point out to-day any of those buildings that you have described?

A. I can point where they stood.

Q. Are any of them standing?

A. The Switzer house is; it is where the Allen house is now.

Q. Do you know of your own knowledge who constructed the house?

A. I do not.

162 Q. Can you tell me of any house that Major Gaines built, of your own knowledge?

A. He built that house where the confectionery is, this side of the Hot Springs house. I recollect about his getting lumber. He also built the Hot Springs hotel.

Q. Don't you know that Mr. Stitt furnished the lumber and built it?

A. I don't know about that.

Q. Can you point out one house that Major Gaines built or paid for building?

A. I don't know any that are standing now.

Q. You stated that he was in possession of that house and lived there all the time. Is it not a fact that he lived on his farm and that other parties have had possession of the house from time to time?

A. I don't think he has entirely left his house on the hill; ever since I can recollect he has been living up there.

By Mr. CURL, as attorney for Sumpter:

Q. Were you present when those premises were turned over to Major Gaines?

A. I don't know as I was present; I recollect of my father speaking about it.

Q. When was that?

A. Seventeen years ago. I don't recollect exactly; I was small.

Q. What was there in the shape of improvements when they were turned over?

A. Some log cabins.

Q. Where did they stand?

163 A. Right north of the Methodist church.

Q. Did Mr. Kempner have a garden running down to the foot of the hill towards the Gaines house?

A. No, sir.

Q. Do you know how Mr. Gaines got possession of the Gaines house?

A. No, sir.

By Mr. BENJAMIN:

Q. You knew he had possession?

A. Yes, sir.

By Mr. CURL:

Q. Do you know when he got possession?

A. No, sir.

JACOB W. PARKER sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Jacob W. Parker; age, 70, and reside at Hot Springs.

Q. State how long you have resided here.

A. I came here the 6th of March, 1853.

Q. Are you acquainted with William H. and Maria Gaines?

A. Yes, sir.

Q. State whether you was the Jacob W. Parker that a writ was served upon for the possession of a mill and where it was.

A. I forget the writ. I know where the mill was; I gave it up.

Q. Was not a writ of possession served?

A. I suppose so; I gave it up, anyway.

164 Q. Where was the mill?

A. It stood right above the Malvern crossing; the road then crossed differently.

Q. Where Shipley's store was?

A. About the north of Shipley's store; ran right through it, I think; had a post office there. I was postmaster in the house where my son's butcher shop is—right in the fork of the road. I delivered the mail from my north window.

Q. Whose house was that?

A. I first rented it from Wm. Gardner, then Wm. H. Gaines.

Q. Gaines came in possession of it while you were there?

A. Yes, sir.

Q. About the time of the mill?

A. I don't know about that; perhaps about that time.

Q. Look at that and see if it is your lease (handing witness paper).

A. Yes, sir.

Q. What improvements were there in the forks of the road at that time?

A. There was a frame building.

Lease offered in evidence from Wm. H. Gaines to Parker, dated 8th December, 1857, and marked Exhibit No. 1.

Q. Do you know Peter Burke?

A. Yes, sir.

Q. Did he have any possessions here after you came, in 1853?

165 A. I leased from Peter Burke and Wm. Gardner, jointly. I think there was four rooms; I suppose 16 or 18 feet front. There was a yard they had fenced below that; it run down 50 or 60 ft., right south of these rooms.

By Com. COBURN:

Q. Anywhere near the Malvern crossing?

A. It is on the west side I am speaking of; it will go below the Malvern crossing now.

Q. What year?

A. Must have been in 1854 or 1855.

Q. That he was in possession?

A. I mean Burke and Gardner.

Q. When were they dispossessed?

A. It must have been in 1854 or 1855. I paid Gardner rent for a year and a half.

Q. Here is a certified copy of the writ dispossessing you.

A. Yes, sir. What is the date?

Q. It was issued on the 3rd of March, 1856.

A. I leased from Major Gaines; the date of the lease will show.

Q. This shows the date upon which this writ was served for these mills. I was trying to fix the date in your mind when Burke was put out, and whether it was about the same time.

A. I was appointed postmaster under Burke. I was his deputy

in the spring of 1854, and he went to Texas right off, and in
166 a short time I was appointed postmaster. It was about the same time, I reckon.

Q. About the same time you were put out?

A. Yes, sir.

Q. State whether you have known these premises since.

A. Certainly.

Q. Who has been in possession of them since?

A. Major Gaines.

Q. State whether Sabin had any possession on this street or not.

A. Not that I ever knew of.

Q. Do you know what became of the Burke property?

A. It was burnt up.

Q. When?

A. In 1864, I reckon; during the war; and a portion was rebuilt again, I think.

Q. You don't recollect anything about Abigail Sabin having any possessions upon this street?

A. No, sir.

Q. Do you know whether Major Gaines built any houses after he got possession of this property before the war; and, if so, where?

A. Yes, sir; built four rooms, about 16 by 18 ft., with a shed-room back; extended from what we called then the Sumpter property, and ran south; log houses.

167 By the CHAIRMAN:

Q. That was on the other side of the street?

A. West of Valley street.

Q. The Burke property that you were speaking of before is on the east side?

A. All on the west side; it was Gardner and Burke'-, but they turned it over to Major Gaines afterwards.

Q. Do you know whether Major gaines had, any time before the war, this property on the west side fenced up?

A. There was a fence on the west side on the hill, but who put it up, Major Gaines or Sumpter, I do not know.

Q. State whether you know anything about Major Gaines having the east side of the street enclosed as far down as Belding's.

A. It was enclosed, but who had it done I do not know. A man by the name of Switzer had a garden and a house, and I think he joined onto old Olney on the north.

Q. Then below that?

A. Nothing else until you come to a brick yard.

Q. Was it enclosed?

A. I think it was.

Q. Who had the brick yard?

A. Lecroix worked it. I always called it George Belding's when I came down. I never knew anybody else but he and Gaines.

Q. How long have you known this property?

A. Ever since 1853.

168 Q. State whether Major Gaines had been in possession and control of this property and leased it as the ostensible owner since he has been put in possession of it.

A. There was trouble about a portion of it—this Burke and Gardner part. Major Gaines has been in possession as far as I know; he has been the ostensible owner.

Q. And you know of no one controlling it but Major Gaines?

A. No, sir.

Q. Those persons building on it built how?

A. They built upon a lease.

Q. From Major Gaines?

A. Yes, sir; but they repeatedly said he had no right and said they were not going to pay anything.

Q. But they went on there, so far as you know, under a contract or lease?

A. That is my understanding.

By Mr. WALSH:

Q. Did you ever hear of the Government owning any property down there?

A. I have heard that for four years, almost.

Q. How many houses on the reservation constructed by Major Gaines were standing on the 24th of April, 1876, that you know of?

A. I don't know of any except where he lived. He did build, but they were burnt down.

By Mr. HARROLL:

169 Q. Do you know a man by the name of Boatright who had possesion of the forks there?

A. Not in the valley; never knew him.

Q. Don't you know that Boatright has been holding possession in this fork adversely to Gaines?

A. I do not know him.

Q. Do you know J. H. Nichols?

A. I know the old sheriff.

Q. What was he before he was elected sheriff?

A. He was a blacksmith right on the place I have described.

Q. Who built that shop?

A. I think Nichols did; he claimed it; was in possession of it.

Q. When did he build it?

A. Three years ago.

Q. You were asked if the property on the west side of the creek was enclosed, and I understood you to say that you did not know whether it was or not.

A. There was a fence built by somebody. I don't know whether Mr. Sumpter claimed it as his fence or Major Gaines, or whether it was a general fence; but there was a worm fence there made of rails.

Q. And you say it enclosed some log cabins of four rooms of some 18 ft. front each; in what year?

A. They were put up in 1866.

Q. And below them what was the distance before you came
170 to vacant ground, upon which there was no house?

A. There was a space of 20 or 30 ft.; but after that Maj. Gaines put up a house adjoining the one south.

Q. From the lower side of the new house about how far was it to the next improvement?

A. It was an old house; the new house was north of the old one. Below this lot, which I leased from Gardner and Burke, Major Gaines put up on the west side three or four houses, one right after another, of the same style, below Little & Jenkins' store. If you start at Little and Jenkins' there was a post office, then two-story rooms, a ware-room, and a saloon, all covered over with the same roof.

Q. They were log cabins?

A. A frame building.

Q. In what year?

A. When I went there, in 1853.

Q. Who owned them then?

A. Burke and Gardner.

Q. How far from those houses to the next house?

A. 20 or 30 ft., and then Major Gaines put up one adjoining the house still below and left a space between the two.

By the CHAIRMAN:

Q. Whose house was that?

171 A. It was known as the Julian, but, as I understand, it was Belding's or Major Gaines'.

Q. What was the frontage of that house?

A. 16 or 18 ft.

Q. How far below that before you came to another house?

A. I cannot tell, but old Mrs. Belding lived there when I came, and lived there for years afterwards.

Q. And who owned that?

A. She, of course, owned it. She lived there, and she is the mother of the Beldin heirs.

Q. How far below her house to another house?

A. It is right where the house now stands—the adjoining house.

Q. What house is that?

A. We always called it the Kempner house.

Q. Who has the store in it?

A. Nobody; a private family is living there; just this side of the Methodist church; the first house; the house with the gallery on it.

Q. The house that you speak of as being there now——

A. That stands as it was; it stood through all the trouble.

Q. When was it built?

A. Before 1853.

Q. Is that the Kempner house?

A. Yes, sir.

A. I do not know as I do, only portions of it. There are some portions that Maj. Gaines had possession of that I know.

176 Q. Do you know anything about Major Gaines having built the Hot Springs hotel?

A. To say that I know it, I do not; it is generally believed that he built it.

Q. Do you know anything about the old Sabin field?

A. Yes, sir.

Q. Can you give a description of it as to where it went?

A. It commenced at the southwest corner of the cemetery or Malvern road and ran down to about opposite or probably a little below the old city hotel, and then run back towards the depot; it then run along what is known as the Benton road, as near as I can place it, until it got up to just in back of where Carhart has a residence.

Q. State whether the ground running up towards the mountain was not fenced up.

A. Yes, sir.

Q. Who was it fenced up by?

A. Major Gaines.

Q. Who has possession of this field—the control of it?

A. After Major Gaines got possession of the old residence there I think he had from that time.

Q. When was that?

A. Some time about 1852 or 1853. I know that Mrs. Sabin lived there a long while.

Q. And Gaines has been living there ever since?

177 A. Pretty much all the time since.

Q. So far as you know he has the control of that field and all those houses?

A. Yes, sir; up to the time they were thrown out into the woods by the fences being thrown down.

Q. When were the- thrown down?

A. When the Gaines avenue was put through.

Q. Up to the time of the decree or since?

A. I don't remember whether it was just before or after. It has been the general understanding that they belonged to Major Gaines.

By Mr. HARROLL:

Q. Describe where the fence ran.

A. I could not say anything about the back fence over the hill. I never was up there; a garden was there.

Q. How far did the garden extend back?

A. It was not on Valley street; I am speaking of the Benton road. His garden fronted on the Benton road.

Q. Back of his house?

A. Yes, sir; the garden ran back from the Benton road to his house.

Q. How far from his house eastward did the garden extend?

A. I don't know as I could tell; I should judge the garden extended from the house in a southerly direction.

Q. Do you know where the line of the Hot Springs reservation is?

A. No, sir.

178 Q. Do you know whether he had any improvements in the rear of his house?

A. His stable lot ran back.

Q. How far back?

A. It ran back to opposite a little house where Irish Jimmie use to live. The road ran between Jimmie's and Major Gaines'.

Q. And took a turn toward the mountain?

A. Yes, sir.

Q. And then turned towards the depot?

A. Yes, sir.

Q. State where John Sammons' blacksmith shop was in the fork of the road.

A. John Sammons has had two or three shops.

Q. The one he sold to Nichols?

A. I don't know as he sold any to Nichols.

Q. And one he sold to Boatright?

A. I don't know as he sold any to Boatright.

Q. Where did you say Mrs. Belding lives—the old lady?

A. She lived on the hill where George Belding now lives.

Q. Lived there during the war or at the end of the war?

A. No, sir; I think she was dead before the war.

Q. Where did she live when you last knew her?

A. My impression is that she lived with Geo. Belding on the hill,

By Mr. WALSH:

Q. How many houses were on the reservation before the fire of May or June, 1864, that were built by Major Gaines, to your

179 knowledge?

A. I don't know that Major Gaines ever built a house in his life.

Q. Or knew that he had them built for his own use and benefit?

A. The one where he lives.

Q. What is it known as?

A. The Gaines cottage.

Q. Will you swear he built it?

A. He was living there.

Q. Point out one other building on the reservation before the fire that he constructed except those little cabins known as the Gaines cabins on the road as you go down.

A. I don't know that Major Gaines built any. I don't know whether those cabins are there now or not.

Q. Is it not a fact that nearly all the buildings spoken of were built by other parties?

A. No, sir; I could not say that:

Q. I will ask you how many buildings were on the reservation on the 24th of April, 1876, that were constructed for his own use and benefit.

A. I think the Hot Springs hotel.

Q. Is it not a matter of fact that Stitt furnished the material for hat hotel?

A. My understanding is that Major Gaines built the house and rented it.

Q. Do you know of any other?

A. No, sir.

By Mr. BENJAMIN:

180 Q. Do you know who put up all those buildings down there?

A. No, sir.

Q. Do you know that Major Gaines was acting as agent of the Belding heirs, and did you not hear Gaines say that he was agent of the Belding heirs?

A. I never heard him say so.

JACOB W. PARKER recalled:

I desire to state that the log cabins spoken of in my testimony were built before the war—in 1858 or 1859.

ABRAHAM PETERS sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Abraham Peters; age, 45, and reside at Hot Springs.

Q. How long have you lived here?

A. 26 years.

Q. Are you acquainted with Major and Mrs. Gaines?

A. Yes, sir.

Q. State where you resided here before the war.

A. I lived with Mrs. Sabin out there at the grave-yard four years.

Q. Whereabouts is that?

A. Near 300 yards below the grave-yard. There is a two-story building there now; a kind of a yellow house; the City hotel.

181 Q. State whether you know anything about this Sabin field spoken of here and where the fence ran.

A. Yes, sir; Major Gaines had a garden there.

Q. Where was the garden?

A. On the right-hand side of the road. I think it ran down about 250 yards, one the same side of the grave-yard.

Q. Who fenced on the other side of the Benton road towards the mountain?

A. Major Gaines did.

Q. You have heard him testify in regard to these old improvements and where they were situated. Is that testimony substantially correct according to your recollection?

A. About the log buildings?

Q. Yes, sir.

A. Yes, sir.

Q. On Valley street?

A. On the right-hand side.

Q. Who had control of those buildings?

A. Major Gaines.

Q. Do you know how long he has had control of this property?
A. He built them before the war.
Q. And has had control ever since the war?
A. Yes, sir. He has been renting them out or occupying them since.
Q. All this ground from Barksdale down?
A. Mr. Sumpter came in there.
Q. Below how is it?
A. Suppose all below was under his control, as well as I can recollect—all below Sumpter.
182 Q. And no one else?
A. No, sir.
Q. How about the east side of the street?
A. At that time there was a vacant space there; I don't believe there was any building on it next to the corner road where you go across the street.
Q. How about below?
A. Below this was the Sammons blacksmith shop; next was Oney, and next was Mrs. Switzer. Sammons' shop was under the control of Major Gaines. I don't know whether he had anything to do with the Oney building. The brick yard below the Switzer building extended to the street.
Q. Has Major Gaines re-ided here with his family?
A. He has been here ever since I have—26 years. I used to drive his family around.
Q. His family would be here all the time?
A. Yes, sir.

By Mr. HARRALL:

Q. How do you know that Major Gaines controlled these various houses?
A. From what others said.
Q. Do you know whether Mr. Gaines sued Mr. Nichols, the blacksmith?
A. That is my recollection.

By Mr. WALSH:

Q. How many buildings do you know, of your own knowledge, that Major Gaines constructed before the fire of 1864?
183 A. Those three log buildings on the right-hand side going down.
Q. What were they known as?
A. Gaines' cabins.
Q. Do you know of any others?.
A. No, sir.
Q. Is it not a fact that the Gaines residence was originally constructed by Mrs. Sabin's mother, and that he made some improvements afterwards?
A. Some portions of that house—the old building—were very common looking, and when he went there the buildings were hardly worth looking at. He fixed them up.

Q. Do you know of any building here on the 24th of April, 1876, that he constructed for his own use and benefit?

A. None except the one he lived in.

By Mr. CURL:

Q. Do you know where Mr. Smith's restaurant is, on the right-hand side of the street?

A. Yes, sir.

Q. How far above that building was Mr. Sumpter's stable?

A. On the ground where Mr. Little's store stood?

Q. How far from the street was the stable?

A. I suppose 30 yards back. At that time they hadn't fenced up in front down to the stable. I think Mr. Sumpter had, on a portion of that ground, a good fence.

HENRY BOBINSON sworn and examined.

184 Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Henry Robinson; age, 41, and reside at Hot Springs.

Q. How long have you resided at Hot Springs?

A. The best portion of my life.

Q. You have heard the testimony here in regard to the old improvements, the Sabin field, and the old fences. State whether they are correct.

A. Yes, sir.

Q. Do you know where the old mill spoken of is?

A. Yes, sir. It is filled up now. It is a little below the Hot Springs house.

Q. Do you know anything about the theatre building?

A. Major Turnbull built it.

Q. Do you know whether Major Gaines became the owner of it or not?

A. Only by hearsay. I understood that he changed it into a hotel and afterwards tore it down, and probably put some of the old lumber into the Hot Springs house.

Q. Where was it situated?

A. Just below the bridge leading to the house known as the Gaines cottage.

Q. Run down to about where?

A. Close to the Cohen house. It is above the corner of the blacksmith shop—between that lot and the creek.

Q. Do you know who has been the ostensible owner and controller of this property?

185 A. Only by hearsay. The log cabins, I suppose, Major Gaines built, because he had his hands at work on them before the war. Some of them have been torn down since the war.

By Mr. HARROLL:

Q. Do you know that Major Gaines owned any of this property described?

A. Only by hearsay.

Q. You say those log cabins have been taken down by his permission?

A. Some have been taken down since the war.

By Mr. WALSH:

Q. State of your own knowledge — any buildings erected by Major Gaines before the fire.

A. I know of those double log cabins.

Q. How many buildings were here on the 24th of April, 1876, that were erected by Major Gaines for his own use and benefit?

A. That house he lived in.

Q. Who built that?

A. He repaired it.

Q. Was it not built by Mrs. Sabin?

A. A portion of it.

Q. Do you know as to whether it is a fact that Major Gaines brought an action of ejectment against all his tenants, and then bought them out or compromised with them?

A. I don't know how he got possession.

In the Matter of the Claim of WILLIAM H. GAINES and MARIA GAINES, No. 784, Consolidated with Many Others.

186 TUESDAY, *February 12th*, 1878.

Forenoon Session.

ALBERT BELDING, being first duly sworn, testified as follows:

Questioned by M. W. BENJAMIN, in behalf of Gaines' claim:

1st Q. Look at the signature attached to this receipt and state whether you know it to be the signature of Mr. Hempstead, and whether he was acting as receiver in the land office at Washington at that time.

A. This paper I have not seen for 25 years. In December, 1851, I went to Washington, and went to the land office there and paid the receiver, B. F. Hempstead, $200 in silver for a quarter section of land embracing the Hot Springs, and he gave me a receipt for it. This is that receipt, to the best of my knowledge.

2nd Q. To whom did you deliver it?

A. To William H. Gaines.

3rd Q. Have you any claim on any of this land?

A. I am one of the heirs of Ludovicus Belding. Major Gaines represented me, with the other heirs. He named my sister.

4th Q. State whether Mrs. Gaines has been the only one of the Belding heirs that has resided continuously on this land.

A. I think so. I have no claim to this quarter section except through Gaines and wife, as the representative of the Belding heirs.

187 (NOTE.)—The above testimony is offered by the —, but the commissioners reserve all questions as to its admissibility.

JOHN H. LACROY sworn and examined.

Questioned by Mr. BENJAMIN, representing Gaines claimants:

1st Q. State your name, age, and residence.

A. John H. Lacroy; age, 40; residence, Cove Creek station, Hot Springs county.

2nd Q. Did you ever reside here?

A. Yes; I came here in 1858.

3rd Q. State whether you are acquainted with the premises then claimed by Wm. H. Gaines; and, if so, state the circumstances connected with your acquaintance with it.

A. On the west side of Valley street there was a little log house that I rented from Mr. Gaines myself and lived in it about 3 months. Right north of that he had a double log house that I rented and lived in for a year. Squire Towle is living right in front of where the little log cabin stood, and Johnson and Foreman are about where the next one was. There was another double log cabin further this way. I think Mr. Hilfridge's house is right over it. There were four log cabins. The court-house is over one of them. I built the chimneys for those houses. North of that there was a house built by Mr. Burke. I built the chimneys for Major Gaines. All
188 north of there were renters, so far as I know.

4th Q. How far north were they paying him rent?

A. As far north as Williamson's livery stable. I heard the men that lived in those houses say they were paying him rent.

5th Q. What improvements were there on the east side of the street at that time?

A. Beginning at the south, right this side of George Belding's there was a fence and some land that had been cleared up. I made brick for Major Gaines there in 1859. There was an acre on that side or over. Right north of that there was a little frame house that Mr. Second or Legarde lived in. They told me they were paying rent to Major Gaines. It was commonly known as the Sweiptzer house. The next north of that was a hotel that Bill Davis had at that time. That is standing there right under Shipley's storehouse; Major Gaines controlled that. Then 40 or 50 feet further north there was a double log house, put up at the same fall. I put the chimneys to it. Right north of that there was a theatre building, said to have been put up by Mr. Trumbull; Major Gaines controlled that, and I worked on the building for Major Gaines. I partitioned it into rooms for a hotel. That theatre stood about where Mr. Kimbell's store is. It was a very long house and a very large house,
189 from 50 to 70 feet long, with the length up and down the street. Up towards the Hot Springs hotel, on the east side of Hot Springs creek, commencing from the yard fence, he had a residence and yard fenced in, the same that is there now. There was a field cleared southeast of his, of ten of fifteen acres, that was enclosed and that was said to be his. That included the country south of the Gaines residence to a point about 40 steps below the grave-yard. The south line run towards the depot two or 300 yards. The fence run right along the road, going to Benton on the south. I think

Gerhart and Williamson are in that field now. There was no building inside of the field. A portion of that field was in cultivation. It had a good fence around it. East of the creek and west of the Malvern road there was a stable and a little cabin that Ed. Peters kept some horses in before the war. There was a garden down next to the Sabin lot that I got my clay from to make these bricks. That was a little southwest of the grave-yard. These enclosures, generally speaking, have been kept up by Major Gaines. He has gen- kept possession of them.

Cross-examined by Mr. CURL:

6th Q. In 1858, the time of which you speak, who occupied
190 the property between where the present St. Louis saloon is and where Sutton's store burnt out a short time ago on the west side of the street?

A. Mr. Sumpter—John T. Sumpter's father.

7th Q. Do you know whether Mr. Sumpter paid any rent to Major Gaines?

A. It was my understanding that he did, but I do not know personally.

8th Q. Do you recollect what improvements Mr. James Sumpter had along there?

A. He had a little hotel there and a stable and lot further down towards the Suttons. I believe he had a garden right back of the house and a little further below.

9th Q. How long was that hotel?

A. It would accommodate 15 or 20 boarders. It was one story. There was a little house standing back of the hotel, due west, for the servants.

10th Q. Do you know what building now occupies the place that Mr. Kempners occupied?

A. The El Paso sale stables does.

Re-examination.

Questions by Mr. BENJAMIN:

11th Q. The- Mr. Sumpter did not occupy that?

A. No, sir; it was below that he occupied.

Q. 12. Do you know whom Mr. Sumpter recognized as his landlord?

A. Major Gaines.

13th Q. Do you know who Mr. Kempner recognized?

—. ——.

191 WILLIAM CURL sworn and examined.

Questions by Mr. BENJAMIN, in behalf of Gaines' claim:

1st Q. State your name, age, and residence.

A. William Curl; age, 31; residence, Hot Springs.

2nd Q. Are you acquainted with Major Gaines and wife?

A. Yes, sir.

3d Q. Do you know the property they claim?

A. Some of it.

4th Q. How long have you known it?

A. I have been employed by Major Gaines in building. I was employed by him to build some rooms immediately north of and in connection with the Gaines residence. I have had some acquaintance with it for 12 years. I am a carpenter and builder. Mr. Gaines honored the orders that I gave for money for the erection of the buildings. I was in the employ of Major Gaines in erecting two storehouses, situated south of the Garland house, which he furnished the lumber, nails, and windows for. He furnished all the lumber and paid for the work. One of the cottage houses near the Malvern road—near the southwest corner of the cemetery, the west side of the Malvern road—I helped to build. Those cottages houses have four rooms each. I built them for him on what was known
192 as the lower Benton road, with four rooms in each. He furnished the materials and paid for the work. I was employed by him as foreman, and he paid the wages of the hands on my orders. I was in the employ of the contractors in the erection of the Hot Springs hotel; Major Gaines was the employer, and paid the orders given by the contractors, to my certain knowledge. I was in his employ to the erection of a little office immediately north of the Hot Springs hotel that was built for the use of and occupied by one Dr. Spence, and I know that the rooms were built by Wm. H. Gaines or under his consent and authority; that is north of the hotel. There was one right near Malvern crossing—I think probably the second building below Malvern crossing on the east side of the street—occupied by William States now as a saloon; that is on the west side of the creek and on the east side of the street. My boss, from whom I learned my trade, was employed to build that building. It was built by Major Gaines. He furnished the materials and paid the hands. It was built for a laundry house and was so used for awhile. There was another building put up down there that is known as the Texas house, that was known originally as Caver's store. I was foreman of the erection of that building,
193 and Major Gaines paid the hands. It was built for Mr. States, but the hands looked to Major Gaines for their pay and got it. It is a two-story house now; it was originally a one-story house. I think it is the first building south of Kimbell's store; it cannot be more than the second building south of there.

Here was introduced in evidence:

FEBRUARY 26TH, 1878.

Major Benjamin offers in evidence the proof of the pre-emption and application of Lydia Belding, widow of Ludovicus Belding, certified to by the clerk of the Court of Claims as being taken from the original papers placed in the office by the Secretary of the Interior, marked X Exhibit; also certificate of the receiver and register of the land office, Camden, Ark., of the application of Lydia Belding, marked Exhibit Y; also certificate from the General Land Office

that B. F. Hempstead and W. H. Ellis were land officers at Washington, Ark., in 1851 and 1852, marked Exhibit Z.

Conveyance from George Belding to William H. and Maria Gaines, dated October 20th, 1877; also deed of Henry Belding to William H. and Maria Gaines, dated on the 9th day of November, 1877; also tax receipt for taxes of 1874 on this property, in favor of the estate of Ludovicus Belding; also statement signed by
194 the clerk of Hot Springs county, showing by whom the taxes had been previously paid; all of which papers are herewith.

GEORGE BELDING sworn and examined.

Questions by Mr. BENJAMIN, representing Gaines' claim:

1st Q. State your name, age, and residence.

A. George Belding; 45 years; Hot Springs.

2 Q. How long have you lived here?

A. Since the spring of 1852, except three years during the war.

3 Q. State if you know anything about the possession of the Belding heirs, or of Major Gaines for them, and how they came into possession.

A. We came into possession of the most of it by the action of the courts, writs of possession, &c. The part that came from Mrs. Sabin was bought from her by the Major; that house occupied the ground where the St. Louis saloon is now; that house he bought of Mrs. Sabin at the same time he bought the property where his residence is, &c.

4 Q. Commence now at the south end of the tract and state what improvements were there in 1860, and who controlled them.

A. Before 1860 there had been some old cabins that may
195 have been destroyed before that time. Above the line there was a little house owned by Runyon. There was a man lived in it by the name of Weaver, in 1859 or 1860. That was just south of the Kempner house, between there and the south line of the Hot Springs quarter. He was a tenant of Runyon's, who owned the house then. The next house to that was the Kempner house, which stands there now, and is occupied by a man by the name of Oxford. Next to that was a house that presented one corner a little more to the road than the other, which was purchased by my mother from a man by the name of Williamson. That old house partly fell down, and was torn away. That was this side of the Kempner house and almost joining it. It would be about McCaffrey's, or probably a little below that. The next house was a little old log cabin that old Mrs. Julian lived in, and that was known as the Julian cabin. I knew that house as long ago as 1855 or 1856. Major Gaines got possession of that Julian cabin and built another cabin to it about the time he built the other row of cabins. He built another cabin to it, leaving a little space between, and put a chimney right in there between the two houses. About 25 feet still further north of that he built two more cabins, with a chim-
196 ney between them. He had a row of four double cabins there with shed rooms attached, and there were four rooms, I think,

to all of them. That row of cabins would extend probably 250 feet, about, above where Horton's now stands. Next above those cabins were the Burke possessions. A man by the name of George Asher sold goods there at one time, a Jew. There was quite a row of houses there. I think four or five rooms. It was quite a long row of cabins. There was a man by the name of William Hutt sold goods there afterwards. Burke and Gardner bought Hutt out, and sold goods there for a couple of years or so, and then old man Gardner's son blowed the thing up with powder and matches. That was the last that I ever knew of that house. From the big, hollow, old red oak tree that stood about the corner here (reference to plat) there was an open place that Sumpters afterwards fenced up. There was an old well that used to be there which is now in the street and filled it. It stood directly in front of Sumpter's grocery. They had a large room that did not come out flush with the street; probably 20 feet square. The fence ran diagonally back to Sumpter's house lot. Then Sumpter's building came up north. They had
197 a long row of buildings. Their dining-rooms was a long room this side of the grocery house. I do not know how many rooms they had there, but probably about five rooms. They extended up to where Kempner sold goods. They had a garden enclosed back of that. It was of the length of that row of buildings and extended probably further. Mr. Kempner had a long store-room and probably two other rooms south of that that he used as a warehouse, that joined onto the Sumpter building. Then above that—north of that—was the storehouse that I occupied. That was about 24 feet long, and presented the side to the street, as all the houses did at that time. The St. Louis saloon now occupies the same grounds. The livery stable stands right on the ground where Kempner was, or at least a portion of it. I am not sure but the old house would run a little south of that. Still north of my storehouse there was a yard with a little dwelling-house standing back from the road that Mrs. Butler used as a residence and afterwards sold to Mills. Right north of that on the street was a little storehouse that presented the end to the road, that Mills occupied. Right north of that again was a little row of one-story buildings occupied by Barksdale and at one time
198 by Flowers. Right in front of the Wilson livery stables (the street was very narrow till after the war) was a little house that was used as a bar-room by Barksdale and other parties. Before Barksdale had it it was used by a man by the name of Benson. It was part of the Barksdale possessions. These are all the buildings that I know of on that side of the street. On the other side of the street, about where the Hot Springs hotel is, an old Dutchman named Sweiptzer had a grocery house. Below Sweiptzer's there was a little cabin that was used sometimes by a man by the name of Dugan, on the corner very nearly where Dr. Taylor's office is now. The theatre building was a little below the bake shop. It was built by Trunball, who failed in the business and sold the house to me and Major Gaines. It cost about $1,700. Below that were 2 or 3 log cabins that Major Gaines built, and below that was a blacksmith

shop, and below that some old houses that I have known ever since I have been at Hot Springs. They were occupied by a man by the name of Hooper. They were just above the Malvern crossing. I speak of the crossing as it was then, probably a little this side of Brighty's saloon, right above the crossing of the creek. Right diagonally across the Malvern road was an old frame house that presented the end up north. There was a little gallery next Valley
199 street, and there was another room and a little hall between. That was occupied by old man Parker some time, and the post office was in it. There was a fence around it. The well was right in front of old Ony Macklin's door, who kept and sold cakes there. She had a little yard fence- in. Below that was Mr. Sweiptzer's residence. He lived there and sold whiskey in the shop I described before. That was enclosed. Before the war there was an enclosure where Lecroy made bricks for Major Gaines. Below that there was an old shanty that McDaniel lived in and that burnt up. After that it was enclosed and a brick-kiln was put up there. Since that Major Gaines fenced that in with a good fence. I had a fence 7 or 8 feet high around my garden. My possessions extended over onto the Hot Springs quarter, and his enclosure joined onto mine. I think it was enclosed all around since the war. I do not recollect whether it was before the war or not.

5 Q. State whether before the war the ground on the west side of the creek was all enclosed.

A. I cannot recollect. There was a fence on the back side of this line of improvements built by the Sumpters, but I do not recollect about any front fence below the Burke possessions. Above
200 there was no fence, because there were buildings there, except Mr. Sumpter had built a fence from the Burke house to his. At one time they had a rail fence that ran down below this big room that I told you about, where there was a crazy man stayed, and he broke loose one day and ran with a chain fast to him and hid in one of the fence corners there, and that made me remember that the fence stood back from the road. I think after that Mr. Sumpter straightened out that fence even with the road. Their stable and horse lot sat back very nearly where the Sumpter house is now, and there was a passage-way left there to get up into the Masonic lodge-room that was up on the hill there, not far from Mr. Little's. The Sabin field there, I do not know just how it was shaped. It was quite a large field at the time Major Gaines got it. There was more than one-half of it that he cut off for her. He ran his fence right on the south line of the Hot Springs quarter from the Malvern road to the back side of her field, wherever that was, and then it extended up to the Benton road. There were two Benton roads used then, but mostly it was *but mostly* the right-hand one going from here
201 towards Benton that ran right up to the hill there. Major Gaines' fence ran right up to that. There was another road that ran where the Benton road now does. I lived there with Major Gaines, and I know that afterwards he extended that fence across that road and turned the entire travel around that crooked corner that was up there.

6 Q. State whether Major Gaines is the only one of the Belding heirs that has resided on this property continuously.

A. Yes.

7 Q. And whether with Major Gaines she has not exercised control of it.

A. With the exception of the little strip that I had down there. They are the only ones that have lived on this quarter except myself. I was the first person who took possession for him of these houses when he bought them from Mr. Sabin.

8 Q. Who has had the control and management of it?

A. Major Gaines, all the while.

9 Q. Do you know whether Mr. Sumpter leased to Major Gaines and paid him rent?

A. I do not, but I have heard that he did. I know Kempner leased a storehouse from Major Gaines and paid him $12.50 a month rent. I never saw the lease.

Cross-examined by JOHN M. HARRELL:

10th Q. Are you one of the Belding heirs?

202 A. Yes.

11 Q. Have you any interest in the prosecution of this claim by Major Gaines?

A. Not that I am aware of. I made him a deed on the 20th October, 1877.

12 Q. What was the consideration?

A. I do not know what it would amount to. I am indebted to Major Gaines or have been, and I do not know how liberal he would be if he gets this thing through.

13 Q. Will you measure his future *liability* by the past?

A. Sometimes he has been pretty liberal, and sometimes he got a little stubborn and was just the reverse.

14 Q. Do you say he has been in possession of all this property 25 years?

A. No, sir; I said the balance, except the Sabin property, he got through the courts, and I do not recollect just when the actions took place. I suppose it was about 1856, probably.

15 Q. Have you, as one of the Belding heirs, shared the income derived from the rents and profits of that property?

A. No, sir. The Major was at all the expense of conducting the suit, and he had a right to the rents.

16 Q. He never accounted to the heirs?

A. He never did to me.

17 Q. Who are the other Belding heirs?

A. His wife, Albert, and Henry M.

203 18 Q. How did he present his claim in the court?

A. In the name of the Belding heirs.

19 Q. Did he pay taxes on this property?

A. Yes; for the Belding heirs. I have seen it on the tax book taxed to the Belding heirs.

20 Q. When did he make the Sabin purchase?

A. In the spring of 1852.

21 Q. Has he been upon the land ever since?

A. I do not know that he has been on it personally. He has travelled considerably. Most of the time he had been residing there. I do not think his family have resided in Chicot county since that time only on a visit. About 1876, at one time, his niece, Mrs. White, ran that house as a boarding-house, and she and his family lived on the farm. There has been some of the family always there. They always claimed it as a home.

22 Q. Did not Major Gaines and his family reside on his place near Sulphur Springs while Mrs. White kept that boarding-house?

A. I think likely he did.

23 Q. Did they not live in Chicot county sometimes?

A. I do not think he did. I do not think he has owned that plantation for 8 or 9 years. I do not know just when he got out of the possession of it, but I guess it was when he went into bankruptcy and his creditors seized it.

204 24 Q. Did they seize his property on the reservation here?

A. I do not think they did.

25 Q. That was the property of the Belding heirs?

A. He built houses here.

26 Q. Did he claim them in his own name or that of the Belding heirs?

A. I never inquired into that. I think he paid taxes on the whole thing. He did not build them for me, and never proposed to give me anything out of them.

27 Q. Did not he live in Texas awhile?

A. I think not. He went there during the war to have his eyes operated on. His family was here most of the time, and I guess all the time. He was in Texas only a short time.

28 Q. You say he obtained possession of this property by the action of the courts?

A. The most of it, not the most in bulk, but that he obtained the possession for the Belding heirs from most of the parties who had possession of it.

29 Q. Do you know where Mr. Nichols' blacksmith shop was?

A. Down there where Booth has a butcher shop, just below Shipley's store. The candy shop is in a part of it.

30 Q. Who is in possession of that?

A. I think Mr. Nichols is.

31 Q. Did Major Gaines attempt to get possession of it?

205 A. He has a lawsuit pending.

32 Q. Did you know a man by the name of Boatwright?

A. Yes; he was about the shop there with John Salmons some time.

33 Q. Do you not know that he bought Salmons out?

A. No, sir.

34 Q. You stated that Major Gaines got possession of these peices of land by the action of court. How do you know that?

A. By his taking possession at the hands of a public officer.

35 Q. Do you know whether Boatwright got possession of this property in the forks of the road?

A. I have been told so.

36 Q. How did you buy the Turnbull theatre?

A. Turnbull was several hundred dollars in my debt and I had to take the building in order to get my money. The Major and I bought together, and afterwards I sold my half to the Major and he paid me costs for it, more or less. I think the entire cost of the building was $1,700. Major Gaines cut it up into rooms, and I understood it was to be used for a boarding-house.

37 Q. Do you know whether he claimed this property in his own name or that of the Belding heirs?

206 A. In his own name, I suppose. It was personal property, and he bought of me. I did not consider that we had any title to the land. I expected at the time that he would get a title.

38 Q. Whatever became of all those old buildings that you have described?

A. I suppose they all got burnt up except some that are standing. The old grocery house that I sold goods in was moved down to the Sentinel office and is in the rear of a part of the house, and the old Butler residence is in the rear of a part of that Job Ward building, very close to the St. Louis saloon, on the north side. I do not believe there are any more standing on the west side till you get to the Kimball house. That is standing. On the other side the old Sweiptzer house is standing in the rear of a part of the Allen house now. There are some cabins there that the Major had, south of the theatre building, which was occupied since the war by a man by the name of Vose as a bakery and afterwards by Bush. That is all I know of unless there are some old log cabins across the creek there that a man by the name of Puckett had. On the east side of the creek there is not a vestige of a house on the Sabin place that was there when I first came here. The log kitchen that is

207 there was built afterwards. His dwelling was built entirely new. The old house was torn away.

39 Q. How far east did the south fence go?

A. It went past the colored church and to the turn of the hill, but not down the hill to the other side.

40 Q. Did the fence on the east side of that lot run south to Gerhart's house, where he lives now?

A. I think it did. It turned and went right up the hill.

41 Q. There was no Gaines avenue there then?

A. No; there were two Benton roads, and the main travel ran along by Major Gaines' fence.

42 Q. Had Major Gaines a power of attorney from the Belding heirs?

A. I think he had.

43 Q. Do you know the terms of it?

A. No, sir; I was a minor then and did not execute it.

44 Q. Was there a power of attorney executed here lately?

A. Yes; three or four years ago. I signed it.

Cross-examined by B. F. RICE, counsel for J. D. Chidester:

45 Q. You say Kempner occupied the grounds covered by the El Paso stable?

A. Yes; there was a row of cabins that extended along the road, and he occupied these. I do not think he occupied the
208 back part of the ground.

46 Q. When was it those cabins were there?

A. I do not recollect when they were built, but I sold goods there in the fall of 1853 and up to the time of the war. They were said to have been burnt down during the war.

47 Q. What building was erected next on that ground where the stable now is?

A. I do not know of any but the stable. It was the next erected.

Questions by B. F. RICE, as attorney for Hot Springs R. R.:

48 Q. Was the Sabin property that Major Gaines bought, the most of it, south of Gaines avenue?

A. I do not think it was.

49 Q. Was the field south of the Gaines avenue enclosed by itself separately?

A. Yes; and it took in the cemetery. He ran the division fence between him and Mrs. Sabin that ran by the road, and he had a garden patch on one side of the fence and she had one on the other side.

50 Q. Where were the Sabin houses?

A. Right where his residence is now. They were in an enclosure by themselves, not in the same enclosure with the field. There was a road between run-ing down to the Malvern road. He had
209 a garden and horse lot and stable on the hill close to where the Episcopal church is. East of where his residence is he had a horse lot. There was a cross-fence between it and the house. There were several enclosures running east of the house. They were not in the same enclosure with the field; there was a road between.

Questions by JOHN M. HARRELL:

51 Q. Did you execute that deed on the date written in it?

A. Yes.

52 Q. You and your wife executed it on the 10th October, 1877?

A. Yes; that is her handwriting.

Questions by A. CURL, for Abraham Kempner:

53 Q. You said something about a cottage house occupied by Mr. Kempner near the south line of this claim, on the west side of the street.

A. Yes.

54 Q. Who built that house there?

A. I do not know who built the first building that was put there. I know Kempner had a log house built in the rear of the other for a kitchen.

55 Q. Was it as long ago as 1852 or 1853?

A. No, sir.

56 Q. What other improvements were there when you first knew the premises?

210 A. I never noticed anything but a little row of frame houses and probably an enclosure. There was a well at this end of the house.

57 Q. How long did Kempner live there?

A. Up to 1861 or 1862, after the breaking out of the war.

58 Q. Are the same buildings that were there when you first knew the place there now?

A. Yes; the same houses, and probably a log house back of it.

By A. CURL, as counsel for J. J. Sumpter:

59 Q. What became of the house known as the Malole house, that stood where the St Louis saloon is?

A. I sold goods in it till the fall of 1861. It was said to have been burnt down during the war. I removed to Saline county in the fall of 1861. I came here on the 3rd of March, 1863, and remained until the fall of 1863, and then went to Texas, and came back on the 10 of December, 1865. I had the house built that is there now myself in 1867.

60 Q. Do you know who built the storehouse occupied by Kempner, north of Sumpter's hotel?

A. No, sir; the first I ever knew of them there was a little log grocery somewhere about there. When I moved here in 1852 they were there and Kempner was doing business there then.

211 61 Q. Do you know when Mr. Sumpter first came into possession of the hotel property?

A. No; I recollect of seeing the old man Sumpter when he came here. I recollect of his family being here in 1847. I left his family in possession of that house when I went to Texas. James Sumpter himself was dead then; he died in the summer of 1861.

62 Q. You speak of hearing some of them say something about a contract between Gaines and Sumpter. What was your understanding of that contract?

A. My understanding was that Mr. Sumpter paid Major Gaines a consideration for the rent of the house, simply sufficient to show that he acknowledged him as his landlord. I believe it was a dollar a month.

63 Q. Did you understand that in the event that the Pelding heirs failed to secure a patent under their certificate of entry Mr. Sumpter was to remain there as a squatter?

A. No, sir; I never had any understanding of the kind.

64 Q. Do you recollect the fence that ran along the north side of the Sumpter possessions before the war?

A. Yes; there was a picket fence there that ran west some distance. There was a considerable enclosure back there; they had a vegetable garden in it.

65 Q. Was there a vegetable garden in the rear of where the stage stable now stands?

212 A. Yes; it ran all along there.

66 Q. Does not the stable occupy a part of the ground occupied by that garden?

A. I think it would; it reaches back a considerable distance.

67 Q. Is the street wider now than it was then?

A. Considerably.

68 Q. What building now stands where the north room belonging to Mrs. Burke originally stood, on the west side of the street?

A. I think it was along where the Little and Jenkins building was.

69 Q. You said something about a passage-way going back to where the Masonic lodge met.

A. Yes.

70 Q. Going back there, did not parties pass through this large gate you speak of?

A. I think Mr. Sumpter fenced that off. I think there was a big gate there.

Questions by MURPHY and WARD, in behalf of Benj. W. Goode, Adams, Sumpter, Vaughan, and other claimants:

71 Q. Who built the house that you have spoken of as being on the land in 1860?

A. I do not know that I can state as to all. The log cabin that I spoke of, on both sides of the street, Major Gaines built.

72 Q. Did the Belding heirs build any of them?

A. No, sir.

73 Q. How many of them did Major Gaines build?

213 A. There were three double cabins he built, and he built one cabin up to another one that was there.

74 Q. Did he build one-half of the houses that were there in 1860?

A. Less than one-half of them.

75 Q. When did he get possession of those houses under the order of court?

A. About 1856.

76 Q. The houses were built at that time and parties living in them?

A. Yes; in some of them.

77 Q. How many of those houses did he or the Belding heirs or all of them together buy?

A. I do not know of any being bought except what was bought from Mrs. Sabin.

Questions by JOHN M. HARRELL:

78 Q. Have you the written agreement referred to in this deed?

A. Yes; at home.

Questions by W. P. WALSH, appearing for 31 claimants:

79 Q. You are a brother-in-law of Major Gaines?

A. Yes, sir.

80 Q. State how much property was on the Hot Springs reserva-

tion after the fire of 1864 constructed by and for the use and benefit of Major Gaines, on the land claimed by him in his petition here, or since the war, and that he was in possession of on the 24th of April, 1876.

A. There was a row of cottages in his yard that has been
214 built since the war; then I think there was an extension up the mountain. There was the Hot Springs hotel.

81 Q. Do you know that he built that?

A. Yes; I furnished him part of the lumber that went into it.

82 Q. Who furnished the money?

A. Major Gaines.

83 Q. What did he pay for the Sabin property?

A. I understood he paid $700.

84 Q. Do you not know it was the understanding that he was to deed that property to the Sabins; that it was merely a mortgage?

A. No, sir; I do not.

85 Q. How much of this property do you get if Major Gaines succeeds?

A. I do not know how liberal he may be. I will get a small part of it. I do not know — much. I am an interested party, sir.

86 Q. Is it not a fact that Major Gaines leased this property from Sabin before he purchased it? Do you not know that?

A. No, sir; I do not know of anything of that kind. He occupied it after he bought it. I never heard of his leasing it.

CHARLES BROWN sworn and examined.

Questions by HAMILTON BENJAMIN, in behalf of Gaines *et al.*:

1s- Q. State your name, age, and residence.

A. Charles Brown; age, 59; residence, Hot Springs county.

2 Q. When did you come to Hot Springs?

215 A. In May, 1851, I came here from Chicot county. Major Gaines raised me from a ten-year-old boy. I lived with him till 1861.

3 Q. Describe this Sabin field and its fences.

A. When they measured off the land that he bought from Mrs. Sabin, Henry Belding laid the worm for the fence between, and my boy and Billy Gaines built the fence. You commence at the corner of Runyon's fence, across the creek on this side. We commenced on the west side of the creek and crossed over and went east. Jordan Flowers is living on the line now. It ran east till it got beyond Jordan Flower's, and then it turned off and ran north and south and came on Hot Springs mountain this way.

4 Q. Taking this one field, did it go to the Benton road?

A. Yes; on the south side of the Benton road he had a garden, and on the south side to the turn of the road, the curve of the road, he had three different patches—a corn patch, an oats patch, and a potato patch.

5 Q. Did it run north to the Benton road?

A. It ran north to the mountain and did not fence up the road.

This field ran north to the Benton road and then came along in front of his house. It came up the Benton road to the valley and then right down to the curve of the road and took that in.

216 On the north side of the Benton road we had a calf lot running back east about 150 yards.

6 Q. On the west side of Valley street, Major Gaines' possessions, was there a fence enclosing that before the war—the whole thing?

A. Yes; there was on the right-hand side of the street. He had us fence it up because the parties complained that they could not keep the cattle and stock out of their houses.

7 Q. Do you know anything about the house Mrs. Sabin had on the east side of the creek and west of the street, above the crossing at one time near where the old theatre was?

A. I do not remember whether she owned that or not. Gates and Montgomery occupied it.

8 Q. State whether below the crossing it was fenced up before the war—on the west side of the creek and the east side of the street.

A. Not to my recollection. There was a passway between the creek and the Major's house, lot, and garden on the east side of the creek. On the west side it was open. The brick yard was fenced up on the south side of the road.

9 Q. State if you know of Mrs. Gaines in 1865 fencing up the lot opposite the Hot Springs hotel.

A. Yes; she had Wesley Matthews to lay the worm in April, 1865, and we picked rails from across the creek and put up the fence.

217 10 Q. How much was fenced up?

A. I cannot say how much, but there was a pretty good scope that is now idle; mighty near every bit of that ground that is in front—that is in front of the Sumpter house.

11 Q. How long was that fence there?

A. It was there in 1866; some of it—part of the south line.

Questions by JOHN M. HARRELL:

12 Q. Did you belong to Major Gaines before the war?

A. Yes, sir; I had been out of his employment ever since January, 1866. I live on the Malvern road, about a mile from his farm.

13 Q. How far was that horse-lot fence from the house?

A. There was a big road between the calf lot and the horse-lot gate and the house.

14 Q. His east fence was how far from the house?

A. About 150 yards.

Questions by Mr. WALSH:

15 Q. What use did they make of this ground after they fenced it?

A. He kept calves in there and raised potatoes. I did not work for him, though, in 1865. That was before the war. Mrs. Gaines put it there in 1865 for a garden, but she did not put it to any use.

Questions by A. CURL, as attorney for John T. Sumpter:

218 16th Q. What sort of a fence was it she had put around the Sumpter lot in 1865?

A. A rail fence 8 or 9 rails high.

17 Q. Did you see it put there?

A. I saw it afterwards. It was burnt down, and I went along where it had been and picked up the rails.

18 Q. How do you know Mrs. Gaines built it?

A. There was nobody else to build it, and she told me she built it. There was nobody here but a few old women and Dr. Colten (or Golden) and Mr. Davis.

19 Q. When did the balance of that fence leave there?

A. I do not know.

By Commissioner COBURN:

20 Q. Who cultivated that garden?

A. No person at all. It was used in old man Sumpter's lifetime as a garden and horse lot. The parties came in afterwards that are on it now, and they did not fence it. They came in in the fall of 1865. There was no house there. They lived at Willoughby's place, and they came there to build.

11 Q. Who did?

A. Mr. Sumpter.

12 Q. Did they take possession of that lot in 1865?

A. Yes, sir.

13 Q. Was the fence standing when Mr. Sumpter returned and took possession?

A. Part of it was on the south.

219 15 Q. You are certain that Mrs. Gaines did not use it after it was fenced up?

A. She did not plant a seed in there. My boy owns that. He put that fence there; him and Billy Gaines.

JOE CRITCHER sworn and examined.

Questions by Mr. BENJAMIN, for Wm. H. and Maria Gaines:

1 Q. State your name, age, and residence.

A. Joe Critcher; age, 25; Hot Springs.

2 Q. State whether you were employed by Mrs. Gaines in 1865 to fence up the property opposite the Hot Springs hotel called the Sumpter property.

A. Yes, sir.

3 Q. State whether you made the fence.

A. I hauled the rails and Mr. Matthews put the fence up with the help of the old man's son and myself.

4 Q. Did you make a good fence?

A. Yes.

5 Q. What ground did you fence up?

A. About an acre and a half.

6 Q. Where was the south line of the fence?

A. Right in front of Major Gaines' old building, back of the Hot Springs house.

7 Q. Was there a rail fence?

A. Some rail and some plank.

Questions by Mr. CURL:

8 Q. How far back did that enclosure extend?

A. Far enough to make an acre and a half square. It was
220 either that or more. It was a good, big garden.

9 Q. What time of year was that built?

A. It was in the early winter.

10 Q. How old were you then?

A. About 18 or 20.

11 Q. Was that while the war was going on?

A. The fence was there when Mr. Sumpter got home from Texas, and when he got back he took possession. It was built before anybody got back from Texas.

12 Q. Who told you the fence was there when Mr. Sumpter returned?

A. I know it was there. He had to tear some of it down before he could get it fixed like he wanted it. I saw the fence pulled down.

13 Q. Who told you it was in 1865 that fence was built?

A. As a matter of course I knew about the time the fence was built.

14 Q. What year of our Lord is this?

A. This is 1868—no; 1878, I mean.

15 Q. How were the planks put up on that fence?

A. Some of them were nailed to a kind of posts set in the ground.

16 Q. How did Mrs. Gaines use that lot after it was fenced?

A. She did not use it, because her stock died before she got to use it. They did not raise anything in there.

221 ELIJAH HARRIS sworn and examined.

Questions by Mr. BENJAMIN, for Wm. H. and Maria Gaines:

1 Q. State your name, age, and residence.

A. Elijah Harris; age, 48; Hot Springs.

2 Q. State whether in 1874 you were employed to build some fence for Major Gaines.

A. Yes; I built some fence running very close to the old stable, on the Benton road, and running from there half a mile, to where old man Jimmy lives, close to the depot. We came up from the mountain to the Hot Spring house and closed it, and just the same way on the other side. We enclosed the Baptist church. I guess we enclosed about 50 or 60 acres; it may have been over. We enclosed it with a good, substantial fence of posts and planks. He hired a fellow to keep the fence up for near two months; when he quit keeping the fence up people tore the planks off. I suppose there is some of it there yet. It stood along the road there as an enclosure for a year or better.

Cross-examined by JOHN M. HARRELL, for James O. Ducker:

3 Q. What time in 1874 was it you ran than fence?

A. The last days of December and first of January.

222 4 Q. When you were building that fence back of Jimmy's, on the side of the hill, did you not fence between some buildings started on the left and north to the Benton road, between Ducker's office and the Benton road?

A. Yes; but there was no fence then. He had started to clear and had some lumber there, and we went and fenced right up on the mountain, and of course he was inside, and we fenced him in.

5 Q. Was he arrested and imprisoned?

A. I do not know what they did with him. I never saw him any place, only in the court-house, where he was the next week at the trial.

6 Q. What became of the lumber he hauled there?

A. I cannot say. The hands that worked with me never touched it.

7 Q. When you commenced work there did not he have his posts in the ground?

A. No, sir.

8 Q. Do you know whether he pulled down that fence in order to get his wagons through when they came with lumber?

A. I know that he had it torn down and the planks knocked off and drove through.

Questions by W. P. WALSH:

9 Q. Do you recollect when you were building this fence for Major Gaines in 1874, when you constructed it along the line where Towle and those colored people lived, it was not Sunday?

A. No, sir; it was not.

223 10 Q. Did you not work on Sunday?

A. That fence was built along there in the week.

11 Q. Did you not run the fence right through Becker, Goodman, Houseman, and Towle's yards?

A. No, sir; their houses were left outside. There was no building left on that side of the fence.

12 Q. Did you leave their well on the other side of the fence?

A. If there was any well there it was not finished; it must have been just a well started.

13 Q. Did not you and Mr. Ducker race in building that fence to see who could get through first?

A. No, sir.

14 Q. His fence was inside of yours six feet?

A. I do not know the distance. He had no fence there when we built ours.

15 Q. Did he have any fence there at all?

A. No, sir; he was just fixing to build a fence. He was getting his poles, and his hands were starting to dig the holes. They had their picks and spades there. They began to dig holes for the posts and we got by there and they stopped.

16 Q. How many holes did they dig?

A. I do not know. The place that they started to enclose in was not more than twice as big as this house.

And further the witness saith not.

224 FEBRUARY 12TH, 1878.

In the Claim of WM. H. and MARIA GAINES, No. 784—Continued.

NATHAN H. CLOYES sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Nathan H. Cloyes; age, 50, and reside here.

Q. Look at that paper and see if it was given by you.

A. Yes, sir; Mr. Curl wrote it and I signed it. I sold the improvements stated there.

Q. It says all improvements, including the residence. Where is that?

A. Where the street starts out below the grave-yard, on the west side of the Malvern road. All the improvements stated are upon the ground. I made 2,000 brick there; had it all enclosed.

Q. Do you—who built the fence that enclosed that lot right north of the church or adjoining the Methodist church?

A. I put the lumber there and had it built for Major Gaines.

Q. Before or since the decree?

A. Before; right after I built the church.

Q. Do you know anything about the fences that Major Gaines had around the Sabin field and whether they were kept up until after the decree?

A. Yes, sir; parties kept pulling it down all the time.

Q. Did they keep repairing it?

225 A. Yes, sir; for two years. I hauled plank several times for Major Gaines to put it up. I cultivated it for two or three years myself.

Q. You were here in 1865?

A. Yes, sir.

Q. State whether you know anything about a fence built on what is commonly known as the Sumpter possession.

A. There was a fence built there. It was understood that she fenced it. The stable was not there then.

Q. Who occupies it now?

A. It is right in front of the Sumpter house.

Q. All that property in front of the Sumpter house?

A. Yes, sir; where Hobson's office is, and runs back to the Sumpter house.

Q. Do you know what became of that fence?

A. A portion of it was torn down. It was broken down there when they were building the stable. They kept the fence up there as well as they could. It was a general camping place. In 1870 a new fence was put up there entirely.

Q. Who put that there?

A. Billy Sumpter was bossing it; had some hands to do it.

Q. And they were armed with shotguns?

A. Yes, sir; the parties working there were armed. They built the fence clear down to Sammons' property, right where the Methodist church stands.

226 Q. On the front or back?

A. All on the front. They went down the front until they came to what is called the Smokey road and went up the hill there. Dr. Hobson afterwards built a dwelling-house right upon the edge of the fence.

Cross-examination by Mr. HARRELL:

Q. When speaking of the fence, which you say you repaired and cultivated the ground within it, to which did you refer?

A. I refer to the old field fences. It did enclose some wood lands. It did not go on the mountain there.

By Mr. WALSH:

Q. You spoke of a stable in your testimony. To what do you refer?

A. Chidester stable.

Q. Do you state as a fact that this fence referred to in your testimony was torn down to construct that stable?

A. I didn't pull it down.

Q. Do you know whether there was a fence there when that stable was constructed, to your own knowledge?

A. I don't know as there was a fence there right at the time of the building of the stable, but just before the building.

Q. How long before?

A. Three months.

Q. You spoke of a fence being built there in 1865. What time?

227 A. During the spring of 1865.

Q. What sort of a fence?

A. Plank fence.

Q. Any part of it rail?

A. Some along in front.

Q. How far back west from the street was the enclosure from the present street?

A. It rather come out in the street.

Q. Then how far east from the mountain?

A. I could not tell you; there was a fence behind Belding's store, and that fence went back to the old Sumpter garden and the quarter-section line.

Q. Was Belding's store standing there then?

A. Yes, sir.

Q. You said something about Dr. Hobson building a residence.

A. Yes, sir.

Q. Whereabouts?

A. Built immediately west of the South End drug store; maybe a little north.

Q. Do you know who lives there now?

A. No, sir; I do not.

Q. Was it within the Sumpter enclosure?

A. Yes, sir; inside of it.

Q. When was it built?

A. I do not recollect exactly the day; I know I delivered some lumber there and some brick.

Q. Is it not a fact that Sumpter built a house there in 1871 and rented it to Dr. Hobson, and he put an addition there?

228 A. I don't know but what there was a little building there called Dr. Hobson's; he was the only one occupying it as a residence that I know of.

Q. Do you know whether Belding had a storehouse there in 1865 or not, at the time you say this fence was built?

A. There was an old storehouse there.

Q. Do you know how long the fence remained there that Mrs. Gaines built?

A. No, sir; it was put up and torn down frequently.

Q. Did you live here regularly in 1865?

A. No, sir; I lived here six months in 1864.

Q. You said something of men being armed. Where was Sumpter? Where was the gun?

A. Sitting up against the fence.

Q. Do you know what he was doing with it?

A. No more than that he had men with him.

By Com. COBURN:

Q. How many did you see with arms?

A. But one.

Q. Who had that?

A. William Sumpter.

Q. Was that gun used in the frightening of any one?

A. He did not make any threats at all; he set the gun down by the posts and told them to go ahead and put up the fence.

Q. Some one was with him?

A. The men were already there; he had three or four hands to work on the fence; they commenced in the night and it was finished that morning.

229 Q. Any altercation at all between him and any one?

A. No, sir.

Q. Any opposition to the building of it?

A. No, sir; I did not see any opposition at that time.

Q. Mr. Sumpter set the gun down before the hands went to work?

A. Some of them were working; nobody interfered with him.

Q. How long did he stay there with the gun?

A. He seemed to be protecting the hands. He was not there more than two hours and a half getting the fence completed. He was there all the time. The last time I saw him he was going below, down towards the Methodist church, putting up the fence.

Q. You said the fence was commenced at night. How do you know that?

A. I was in town, at Ellsworth, the evening before, and the new posts were not set then, but the next morning they were there and nailing the fence to them.

Q. Did you see anybody at work on it that night?

A. No, sir.

By Mr. RICE:

Q. Where did that fence commence on the north?

A. Adjoining Chidester's stable.

Q. Southwest corner of the stable?

A. Yes, sir.

230 Q. It did not enclose it?

A. No, sir.

By Mr. WALSH:

Q. You acted as agent of Major Gaines for several years?

A. Yes, sir; nearly two years; use to rent some houses and collect the rents.

Q. What was Major Gaines' revenue a year—how many thousand dollars?

A. I do not know.

Q. How much did you collect as agent for a year?

A. I could not tell.

Q. Ten thousand a year?

A. I don't think it was.

SAMUEL H. STITT sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Samuel H. Stitt; age, 34, and reside at Hot Springs.

Q. Are you acquainted with William H. and Maria Gaines?

A. Yes, sir.

Q. State when you came to Hot Springs to reside.

A. In 1870.

Q. What business did you follow at that time?

A. Hotel-keeping. I opened the Hot Springs hotel.

Q. State whether you know anything about Sumpter and others fencing in the ground in front of that hotel in 1870 and how they done it.

231 A. I remember that a fence was put along in front or a little below the Hot Springs hotel.

Q. Who was engaged in it?

A. I remember that there was considerable talk at the manner the fence was put up; some excitement there, and parties were standing around armed.

Q. What were they armed with?

A. Shotguns.

Q. Who had them, according to your best recollection?

A. As far as I can remember, they were Mr. Sumpter, his brother, Mr. Daniels, William and George Sumpter. I don't know that they were all armed, but I remember there were two or three shotguns on the ground, and considerable comment was made of it by the visitors of the hotel, who had collected on the porch. Major Gaines started to go over, and I rather think his family tried to prevent his going; but he went over, and there was some little apprehension about his safety.

Q. Did they remain armed until the workmen built the fence?

A. As far as I can remember, they did.

Q. Was there any fence there previous to that time, in 1870?

A. I can remember part of an old fence down at the southeast corner of that lot.

Q. But no enclosure?

232 A. A remnant of a fence there—a skeleton of a fence.

Cross-examination by Mr. HARRELL:

Q. Who built the Hot Springs hotel?

A. Mrs. Gaines and Mr. Gaines. I furnished the house and run it on a partnership.

Q. What did it cost?

A. I do not remember exactly. When we opened it the hotel was not completed; considerable repairs were put on afterwards; it was plastered afterwards and an addition put on.

Q. Do you know whether there was any money borrowed from a lawyer in Memphis to build it?

A. I don't think there was.

By Mr. RICE, as attorney for Hobson:

Q. Was not that vacant ground from Chidester's stable down to where the stores are at present?

A. As far as I can recollect, it was open along there.

Q. Including Hobson's office, was not that all vacant in 1870?

A. As far as I can recollect, it was.

Q. Enclosed in any other way except the one just described?

A. I don't know as it was.

By Mr. CURL:

Q. Do you remember who the parties were that had arms?

A. I cannot remember exactly who they were.

233 Q. Were there many of them?

A. No.

Q. Was anybody opposing the construction of the fence?

A. Not that I know of.

Q. Do you know when that fence was built?

A. I do not remember the time of day; it seems to me when I saw this scene it was in the morning.

Q. Were you here in 1874?

A. Not all of the year.

Q. Do you know anything of Mr. Sumpter's building a fence there in 1874?

A. No, sir; I was in Washington in 1874.
Q. What is the relation existing between you and Major Gaines?
A. Friendly.
Q. Are you not the son-in-law of Mr. Gaines?
A. I am.

HIRAM IRWIN sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.
A. Hiram Irwin; age, 63, and reside at Hot Springs.
Q. Do you know whether there was a fence in 1865 built on the ground opposite the Hot Springs hotel; and, if so, who built it?
A. No, sir; I do not recollect. I recollect seeing a fence there distinctly after the war, but I do not know who built it.

234 Mr. Benjamin offers in evidence the pleadings in the case of Gaines and the Belding heirs against Wm. and Elizabeth Sumpter, filed January, 1866; also a writ of possession for the property commonly known here as the Sumpter property, and the return of the sheriff putting Gaines in possession under *mesne* process.

WILLIAM H. GAINES sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.
A. Wm. H. Gaines; age, 80, and reside at Hot Springs.
Q. State whether you ever made a lease in writing with James Sumpter or not.
A. I did.
Q. State what has become of that lease.
A. I have searched everywhere for it.
Q. Have you any copies?
A. There was in a good many cases.
Q. Look at that and see if it is a copy.
A. I presume it is; they were all copied by a man by the name of Knight at Little Rock correctly, and some filed in court and proved.
Q. You are satisfied this is a correct copy?
A. Yes, sir; have had it read to me several times.

Copy of lease offered in evidence and marked Exhibit No. —.

Q. Was the store and three rooms that were reserved in this lease a part of the possession that you recovered by the writ of
235 possession and ejectment suit from Sumpter?
A. Yes, sir; leased them on the same day.
Q. To whom?
A. Kempner.
Q. Look at that and see if it is the lease you made.
A. It has been read to me. I know it is the lease.

Articles of agreement between Wm. H. Gaines and Kempner offered in evidence and marked Exhibit No. —.

Q. State what you know of this property being fenced up after the war by Mrs. Gaines and what occurred afterwards.

A. I got home on the 18th of May, 1865. That ground was fenced up partly with plank and rails in front of the Sumpter house. The Sumpter family had left here in 1864. My considering it her possession, and wanting to make a garden, had it fenced along there and it remained so for some time. After the Sumpter family came back they wanted to build in front. I objected to them doing it; they built back, then. How long the fence remained am not able to say, perhaps a year or two. Sumpter had taken possession; he tore down the fence passing through and used some of the rails elsewhere. My lawyer advised me to bring suit, which I did; they put
— the suits a long time and Judge Watkins, my lawyer, made
236 a proposition to Sumpter's lawyer to just pass them over without trying them, and I agreed to it. I think several courts were just passed in that way by an agreement of counsel. When the hotel was built the ground there became more valuable in 1870 or 1871, and one morning I found that Sumpters had been at work and put a fence along there. My people insisted that I should not go over there. I told them I should certainly go, as I had no fear. I went over there and had a few words with them and told them they were acting contrary to law and order and to stop fencing up the ground, and they said they would do it. They continued to fence it up and took in a good deal of ground in back, run it along down the street on the ground that I had been put in possession of by the sheriff in the suits brought after the courts gave me judgment against parties. They fenced up a great deal of ground they never had in possession and run a fence down off the mountain, fencing in my improvements. I paid no attention to it and just let them go on.

Q. Any of them armed?

A. I think they were all armed. I remonstrated against their acting in violation of law and order and that I was legally in possession of it.

By Mr. CURL:

Q. This lease that you showed here was executed at the time it bears date?

237 A. Yes, sir.

Q. How long after you got judgment against Sumpter?

A. Pretty soon afterwards.

Q. Was the suit based upon the certificate of entry of the Belding heirs?

A. Yes, sir.

Q. State if there was not an agreement between you and Mr. Sumpter before the trial of that case in February, 1856, by which Mr. Sumpter was not to answer in that suit and let judgment *nil dicit* go against him.

A. I think not.

Q. Was there not an agreement between you and he that he was to take these lands and remain in possession until the question of the right to the property was settled, or rather the right of the Belding heirs was determined, and in the event the Belding heirs did not obtain the right of entry he was to remain in possession?

A. No, sir; I got judgment against Sumpter for back rent. I did not want his money. I was only fighting for the land, and told him that he could remain there at a nominal price; told him he could give me these three houses for my own use, and that I would lease him all the balance and his bath-house. He told me
238 he would agree to it when he came home, but it was after the judgment. The judgments were all got at the same court, and the compromise was made in the presence of Sharp and Stedham, who drew the lease.

Q. Were you put in actual possession by the sheriff?

A. Yes, sir; did not put out Mr. Sumpter because he agreed to the compromise and signed the lease the same day. I leased to Kempner three rooms at $12 a month.

Q. Was this arrangement made at the time or previous to the time that the sheriff came with the writ of execution?

A. Yes, sir; he returned the execution satisfied.

Q. Did you build any house upon that land at that time?

A. No, sir.

Q. What title had you to the ground?

A. An occupant's title under the last act of Congress.

Q. At the time you say you made this lease, was it the time you brought the suit?

A. Yes, sir.

Q. What was your evidence of title at that time?

A. The suit shows that. The evidence of title was the certificate of entry and the purchase-money, and that was fully sustained by the courts and confirmed by the Supreme Court of the United States.

239 Q. Didn't you get that certificate of entry by representing to the departments at Washington that you simply wanted to get it to give you a standing in court?

A. I did not; my attorney may have done so.

By Mr. MURPHY:

Q. Did you not apply to the land office at Washington, Arkansas, first to enter this land—this quarter section?

A. I did not; Mrs. Belding had, long before I knew her.

Q. Did you afterwards apply, either in person or by attorney, at the land office at Washington, Arkansas, to get a certificate upon which you sued Sumpter?

A. No, sir; I applied to the Secretary of the Interior to refer the claim of the Belding heirs as filed there in the office back for reproof, all of which is here before the commission.

Q. Do you not know that your certificate was issued or ordered to be issued upon the representation made by yourself or your counsel

to the department that you merely wanted — to give you a standing in court, and not with the expectation of getting a patent upon it?

A. I do not know that there was any such thing.

Q. Was that your understanding?

A. I know I would never have any such thing.

240 Q. You don't know there was any such representation made to any of the departments to that effect or not?

A. I think it is possible my attorney, A. H. Mills, may have made application; I do not know it.

Q. Which one of the parties had the gun when they were fencing?

A. I would not be positive as to which one; I was too blind.

Q. Can you state that the fence you understood your wife to build enclosed that ground completely?

A. Yes, sir; the bulk of it.

Q. It made an enclosure around part of it?

A. Yes, sir; it was so when I got home the 18th of May.

Q. Was it the understanding between you and James Sumpter prior to or at the time of the execution of that lease that if that arrangement was made he should be left to remain in possession at a nominal rent until the question as to whether the Belding heirs would get a title should be settled; and if not settled favorably to them, was it not the understanding that then your rights as nominal landlord should cease and he should remain in possession without any reference to you or your rights?

A. Had no bargain of that sort.

241 Q. Was that the understanding between you?

A. I frequently said I should not claim anything; there was no particular understanding.

Q. Did you, in this city, or have you not in this place, frequently said since the war to John and William Sumpter that you made no claim to that land unless your title, or the title of the Belding heirs, should be sustained?

A. I do not think I had had any special contract of any sort.

Q. Have you made statements to them to that effect?

A. I claim the land under the laws of the country, and am entitled to it now. I made no claim to anything after the court decided against me. I disclaimed owning anything or having a transaction with anybody, buying or selling, until Congress passed the land law, which, I think, gives me a perfect right to the property. I do not say I am entitled to it. If I am entitled to it under the law of the country of possession and occupancy, I am the largest occupant. I have spent four times as much money on the property as anybody else, built more houses, and brought the property up into notice.

Q. Have you not in this city since the war talked to Wm.

242 and John Sumpter, the adverse petitioners, frequently about this matter, and have you not told them in these conversations that you had no claims against them whatever in reference to the land unless your pre-emption certificates should be sustained?

A. I am claiming——

Q. I am not asking you how you are claiming. Have you made such statements as those?

A. I think likely I have made such statements. I made no such bargains with any one.

By Mr. RICE, attorney for Mr. Hobson:

Q. Since 1867 has there been any improvements on that piece of ground fronting the Hot Springs hotel, that was enclosed by your wife, except the fence that you have described that the Sumpters put up?

A. I think the fence that my wife put up there covered that very ground.

Q. In 1867, after that fence was away?

A. Is that the date of the lease to Chidester?

Q. The lease to Chidester? I am speaking of the ground south of Chidester's stable, including Dr. Hobson's office, and that vacant ground below there. Was there any buildings on that ground, any improvement except the fence that your wife built and was taken away, and since that, except the fence built in 1870 by the Sumpters?

243 —. Not by the Sumpters. There was a house built there adjoining the stable and Dr. Hobson's office.

Q. When were they built?

A. I cannot tell exactly.

Q. Before they were built was not that vacant ground, with the exception of the fence, put up in 1870?

A. Yes, sir.

Q. Had it not been vacant all the time after the time the fence was put up by your wife up to the time Dr. Hobson's office was built?

A. Yes, sir.

Q. And vacant at the time Hobson's office was built?

A. I think so.

By Mr. RICE, as attorney for Chidester:

Q. Has there been any improvements since the war in the way of buildings upon the lot of ground where the El Paso stable is now standing up to the time it was built?

A. No, sir; no improvements there when I leased the ground from Mrs. Chidester; might have been some patches of fence.

By Mr. BENJAMIN:

Q. Here is a contract between you and Walingford. Is that your signature?

A. Yes, sir.

Q. You had such a contract and it was reduced to writing?

244 A. Yes, sir; and built a house where Louis Bertsch now holds.

Q. State whether you had one with Gillis to build a stable.

A. Yes, sir.

Q. Where is that stable?

A. South of the house. Put all those buildings up and the dwelling-house at the same time, and that is where Toole and others are. Most of them are my houses, and when the receiver came they were turned over to him. They are the houses that I built.

Q. State whether you kept them up or tried to keep them up until after this decree.

A. Yes, sir; I tried all the time to keep them up.

Q. And were torn down frequently and repaired?

A. Yes, sir.

By Mr. HORRALL:

Q. Here is what purports to be a lease of a lot of ground by you to Gillis. Do you know whether or not that is the original lease?

A. I do not. I think there were two or three contracts with Gillis.

By Mr. BENJAMIN:

Q. Contract to build a stable?

A. I furnished all the lumber; had such a contract.

By Mr. HORRALL:

245 Q. Does this profess to be a lease between Wm. Gaines and Gillis for a parcel of ground situated on the east side (reading from lease)?

A. That is the ground exactly; it is the Gillis stable and dwelling-house which was cut into two apartments to rent, and the stable makes three.

Q. By what right did you assume to lease this ground—a right of yourself or as agent of the Belding heirs?

A. Myself; some of them were in the name of the Belding heirs and some in my individual name.

Q. Did you lease it as your own ground?

A. By representing the Belding heirs—being one of those heirs—and also representing Wm. Gaines individually. Where I have bought and built I have considered it my own property, not the property of the Belding heirs. These heirs will get from me all that they would be entitled to where I have got possession.

ALPHONSO CURL sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Alphonso Curl; age, 37, and reside at Hot Springs.

Q. State whether you were formerly an agent of Mr. Gaines.

A. I was the agent of Major Gaines and collected all his
246 rents in 1873 and some little time before that.

Q. Look at that lease and see if it was drawn up by you or not.

A. I wrote that lease.

HIRAM IRWIN recalled:

Q. Are you acquainted with Major Gaines and wife?

A. Yes, sir.

Q. State whether you were employed or assisted in any way in building a fence at any time for Major Gaines; and, if so, when and where.

A. I think it was about four years ago I fenced up a piece of land near where the depot now is. He came to me one day and made a proposition that we build a partition fence between us, he to furnish a part of the material and I was to do the work.

Q. Where was it?

A. It ran pretty much north and south on what was his line; it was built of cedar posts and of good planks; it ran upon the mountain, going north some 30 or 40 rods; then Major Gaines went with his hands, continued the fence up the mountain, and, I suppose, clear around. It enclosed about four acres near the depot.

By Mr. WALSH:

Q. When was this partition fence constructed?

A. About four years ago.

247 By Mr. RICE: From the point where you commenced that fence to run north, state whether there was a fence running south.

A. Yes, sir.

Q. How far this side of the depot was that fence?

A. Right near where Capt. Roe's stable now is, about forty steps this side of the depot.

By Mr. HARRALL:

Q. Do you recollect about what time it was that Major Gaines built that fence? Where did he commence it—at his house?

A. This new fence commenced, I think, at his horse lot—he had a horse lot around his stable—and went to the Benton road; then it turned and went north and then joined me.

By Com. COBURN:

Q. Was there any cleared land northeast of the horse lot?

A. I don't think there was in the piece I am speaking of now—the mountain side of the Benton road. It was just regular woods.

Q. Did you see anybody at the time Mr. Gaines was running his fence from the horse lot east attempting to put up improvements on the north side of the line?

A. I didn't see them at work, but saw plank and lumber where they said Mr. Ducker was putting up a building.

Q. Did you see anybody at work on that improvement at any time?

A. No, sir.

248 —. How much lumber did you see on the ground?

A. Really I do not know; some four *of* five loads.

GEORGE M. FRENCH sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. George M. French; age, 42, and reside at Hot Springs.

Q. State whether you made a survey of the Hot Springs reservation during 1875 or not.

A. I did.

Q. State the condition at that time of Major Gaines' fences and fields east of Hot Springs creek.

A. There was an old field southeast of the cemetery there and a fence along by the Malvern road, very near the township line, little north of it, but there was a fence along there that was intended to have been put upon the line and was out perhaps 1,600 feet, and was along in front of some houses built by the colored people on the hill; then there was a fence bearing to the left, running north, continuing on down, which would now be just east of the enclosure of Richard Irwin, north or west of the depot building, and joined a fence coming down on the south side of the Benton road. There was a fence on both sides of the Benton road.

Q. What fence was there on the north side of the Benton road?

249 A. There was an enclosure fence on the north side and an enclosure of a plank fence that took in the lot east of Major Nelson's place—seemed to be a horse lot—and further on was another board fence that ran up north, up the hill, as far, I should think, as the claim of Mrs. Murphy, on the side of the mountain; then followed down and included the house occupied by Mr. Davis, and came down and to the fence north of Major Gaines' residence, and joined on there.

Q. You were here when the receiver took possession?

A. Yes, sir.

Q. Do you know the condition of the fence about that time?

A. There had been an avenue opened up called the Gaines avenue; run down from the Benton road, south of the cemetery, to the depot. I mean the Malvern road.

By Mr. WALSH:

Q. What buildings were in the enclosure at that time?

A. A good many.

Q. Did you trace the lines?

A. Yes, sir; I traced all the enclosures and made all the lines on the map to correspond with them.

Q. What kind of a fence was on the top of the mountain?

A. Posts and rail on the mountain. The fence did not go
250 on the top of the mountain. There is a line on the map showing that fence.

Q. You are positive there was a fence alongside of the mountain?

A. You remember where the stable burned down with the mules in it. It was right north of that. It started right opposite that and went right up the hill.

Q. Do you know whose fence that was?

A. I suppose it was Major Gaines'.

Q. Was there an enclosure east of that?

A. There was an enclosure on three sides, but none on the north side; east going out to the quarter-section line—going out to Mc Govern's.

By Com. Coburn:

Q. What was the condition of the ground east?

A. It was timber ground except around the house and horse lot.

Q. What was the condition of the ground east of Gaines avenue?

A. It had all been cleared, as now, as far as the depot building. On the left-hand side of the Benton road it was natural timber land until you got to Irish Jimmie; then there is a cultivated field there a little place where Roe's stable is now that had been cleared off.

February 12th, 1878.

Offered in evidence contract between Wm. H. Gaines and John J. Gillis, dated Feb'y 13, 1873, marked Exhibit A.

251 Also offers in evidence contract in regard to a building between Gaines and Foster and Walingford, dated 1st of January, 1871, marked Exhib- B.

Also a lease referring to the same parties in reference to building what is known as the Bertsch house, marked Exhibit C.

Also lease to Louis Bertsch from Wm. H. Gaines for the same property, marked Exhibit D.

Also contract of lease between Wm. H. Gaines and S. J. Bumton, marked Exhibit E.

Also bill of S. Cloyes for certain improvements, dated Aug. 1st, 1873, marked Exhibit F.

Know all men by these presents that I, William H. Gaines, of the county of Garland and State of Arkansas, do hereby appoint and constitute Albert B. Gaines, of the city of Hot Springs, county of Garland and State of Arkansas, my agent and attorney-in-fact, for me and in my name to demand, obtain, and receive from the Hot Springs Commission any certificate, award, or any other paper or evidences of indebtedness that may be issued to me and in my name or for my benefit granting me pay for any buildings or improvements, condemned, situated on any of my claims, and to receipt to said commission in my name for any and all such certificates; also to receive in my name and stead and receipt for

252 same any certificate, award, or any other paper given by said commissioners to me giving me the right to purchase from the United States Government all lots or parcels of land described in my petition, number —, and to do any and all acts for me and in my name necessary to be done in order to secure a title from the United States Government to said premises to the same effect as if personally present. My said attorney is hereby empowered to perform all such matter as he may deem necessary for the purpose of

carry- out the objects herein mentioned, and I hereby ratify and confirm all that he may do in the premises.

Witness my hand and seal this 11th day of December, 1879,

WM. H. GAINES. [SEAL.]

STATE OF ARKANSAS, }
County of Garland, } *ss:*

Be it remembered that on this day personally appeared before the undersigned, a notary public within and for the county aforesaid, Wm. H. Gaines, to me well known as the person signing the foregoing power of attorney, and acknowledged that he executed the same for the uses and purposes therein mentioned and set forth.

Witness my hand and seal as such notary public on this 11th day of December, A. D. 1879.

JAS. G. ALLEN,
Notary Public.

[Seal Jas. G. Allen, Notary Public, Garland Co., Ark.]

253 This article, descriptive of the improvements of Abigail Dupass, late Abigail Sabin, at Hot Springs, in the county of Hot Springs and State of Arkansas, lately sold to Wm. H. Gaines and to be delivered to said Gaines on the 1st day of April, 1852, represents that the claim and improvements sold as aforesaid are as follows, to wit: Lying on the east side of Hot Spring creek, immediately at the foot of the Hot Spring mountains, including two hot springs on the spur of the mountain; also a number of cabins at the foot of the mountain, with stables, corn-cribs, a garden, and other lots adjoining the stable; also a field and other cleared land near said buildings; also a large field, or rather a part of said field, near by the improvements aforesaid; all of which said improvements as aforesaid extend over and cover some twenty acres, more or less, consisting of all the improvements on the east side of said Hot Spring creek, lying on the southwest fourth of section thirty-three, township two south, range nineteen west, except a small lot and dwelling-house known as Richard Puckett's and one other small cabin near the lower Hot Springs and a small mill-house and a cabin known as White's mill. The sale of the aforesaid improvements to the said Gaines is upon such condition and terms
254 as are especially set forth in the conveyance of the said Dupass to the said Gaines, heretofore made in writing, and this article is intended as a more full description of the premises aforesaid; and the said Abigail Dupass does hereby deliver unto Lydia Belding, for said Wm. H. Gaines, the entire possession of the premises aforesaid, and does hereby acknowledge the payment of seven hundred dollars to her, the said Dupass, being in full for the improvements and premises conveyed as aforesaid, this 25th day of March, A. D. 1852.

A. DUPAS.

List of Real Property Assessed for Taxation in Hot Springs Co. for the Following Years.

Owners of land.	Part of sec.	No. of acres.	Section.	Town-ship.	Range.	Valuation.	Remarks.
Belding, Ludovicus.....	S. W.	160	33	2	19	70000	Assessor's book for 1862.
Belding heirs..	S. W.	160	33	2	19	20000	" " " 1866.
Belding heirs.....	S. W.	160	33	2	19	20000	Collector's " " 1866.
Belding heirs.....	S. W.	160	33	2	19	20000	Assessor's " " 1867.
Belding heirs	S. W.	160	33	2	19	20000	Collector's " " 1867.
Belding, L., heirs.....	S. W.	160	33	2	19	20000	Assessor's " " 1868.
Belding, L., heirs..	S. W.	160	33	2	19	20000	{ Before reconstruction. { Collector's book for 1868.
Belding heirs. Sam. Tate & Co.....	*S. W.	*160	*33	.....	.....	10000.00	{ Assessor's " " 1868.
Belding heirs.....	S. W.	160	33	2	19	{ 10000 { 70000	{ After reconstruction. { Injunction, 1868.
C't c't sustains injunction, collector credited same.							
Belding heirs	S. W.	160	33	2	19	{ 100000 { 10000 }	Assessor's book for 1869.
Belding heirs	S. W.	160	33	2	19	10000	Collector's " " 1869.
Belding heirs..	P't S. W.	160	33	2	19	15000	Assessor's " " 1870.
Belding heirs, 1870	S. W.	160	33	2	19	15000	Collector's " " 1870.
						Equalized to $80000.	
Belding heirs.....	S. W.	160	33	2	19	10000	Collector's " " 1871.
Belding heirs.....	S. W.	160	33	2	19	80000	Collector's " " 1872.

* Erased in copy.

STATE OF ARKANSAS, }
County of Hot Spring. }

255 I, John W. Keith, clerk of the circuit court in and for said county, do hereby certify that the annexed and foregoing is a true and perfect copy and transcript of the assessment of the foregoing land as the same appears on the tax books now on file in my office for the years as set forth in said transcript; and I further certify that the tax books from the year 1852 to 1862 are not to be found in their office; that the same were lost during the war or burned with the court-house in 1873.

In testimony whereof I have hereto set my hand and [SEAL.] the seal of said court on this 12th day of February, A. D. 1878.

JOHN W. KEITH, *Clerk.*

Know all men by these presents that I, George Belding, in consideration of one dollar in hand paid and a written agreement bearing even date herewith to convey a certain portion set out in said written agreement that may be awarded to Wm. H. and Maria Gaines, do quitclaim, transfer, assign, set over, and release all my right, title, and interest of every description in and to the southwest quarter of section (33) thirty-three, township (2) two south, and range nineteen west, except that portion on the east side of Valley street and south of and adjoining the ground leased by R. B. Clyde from Wm. H. Gaines, and extending south to the section line 256 and east to Hot Springs creek, which property said George Belding has had in his possession for more than seven years, in the county of Garland and State of Arkansas, and which forms a part of what is commonly known as the Hot Springs reservation, to Wm. H. Gaines, his heirs and assigns; to have and to hold forever.

In witness whereof we have hereunto set our hands and seals, at Hot Springs, Arkansas, this 20th day of October, 1877.

GEORGE BELDING. [SEAL.]
AMANDA BELDING. [SEAL.]

COUNTY OF GARLAND, }
State of Arkansas. }

Be it remembered that George Belding, personally well known to me to be the party grantor signing the foregoing deed, — and acknowledged that he signed the same for the purposes therein stated; also at the same time and place appeared Amanda Belding, wife of said George Belding, and, in the absence of her said husband, acknowledged that she had signed her relinquishment of dower for the purpose therein stated and without any undue influence from her said husband, and I do so certify this 20th day of October, 1877, at Hot Springs, Arkansas.

GEO. W. BAXTER,
Notary Public.

257 [Seal Geo. W. Baxter, Notary Public, Garland Co., Ark.]

STATE OF ARKANSAS, *sct:*

In the Supreme Court.

Be it remembered that at a term of the supreme court of the State of Arkansas begun and held at the court-house, in the city of Little Rock, on the first Monday of January, A. D. 1855, amongst others were the following proceedings, to wit, on the 23d day of February, 1855, a day of said term:

PATRICK BURKE, Appellant,
vs.
WILLIAM H. GAINES *et al.*, Appellee. } Appeal from Hot Springs Circuit Court.

This cause came on to be heard upon the transcript of the record of the circuit court of Hot Spring county and was argued by counsel. In consideration whereof it is the opinion of the court that there is no error in the proceedings and judgment of said circuit court in this cause.

It is therefore considered by the court that the judgment of said circuit court in this cause rendered be, and the same is hereby, in all things affirmed with costs.

It is further considered that said appellees recover of said appellant all their costs in this court in this cause expended and have execution therefor.

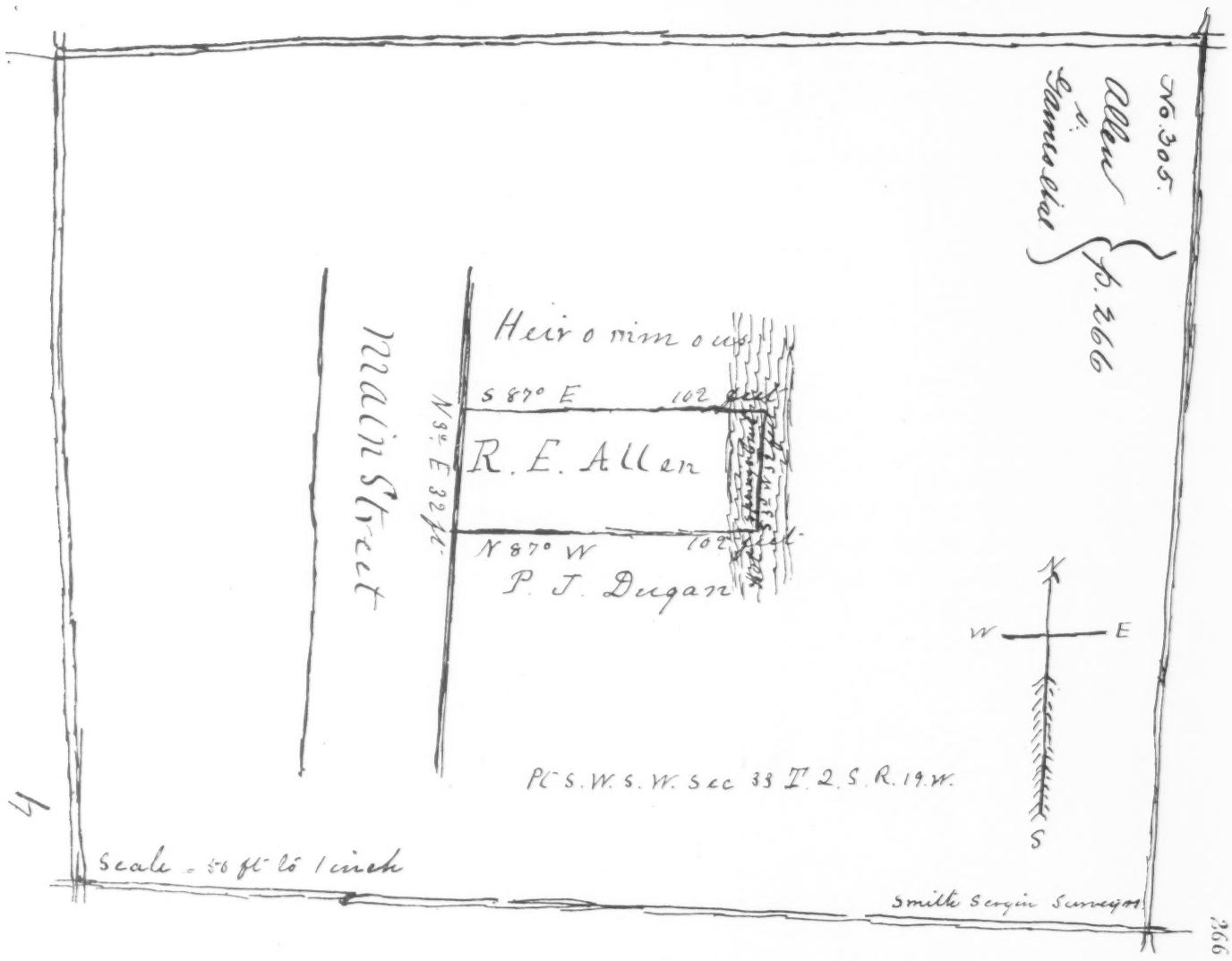
258 In testimony that the above is a true copy of the judgment of said supreme court rendered in the case therein stated I, Luke E. Barber, clerk of said supreme court, hereto set my hand — affix the seal of said court, at my office, in the city of Little Rock, this 7th day of February, A. D. 1878.

Seal of the Sureme Court of Arkansas.

L. E. BARBER, *Clerk.*

259 Your petitioner avers that at the time they entered the premises herein claimed as aforesaid one Jacob W. Sweiptzer had made and claimed to own and had possession of certain improvements on the east side of Valley street, and your petitioner brought suit against said Jacob W. Sweiptzer on the 5th day of January, 1852, for said improvements and possession and recovered judgment therefor, which judgment was affirmed by the supreme court of the State of Arkansas and by the Supreme Court of the United States; and on the — day of ——, 1858, your petitioner, Wm. H. Gaines, was by the courts put in actual possession of said premises and improvements and peaceably continued to possess, control, use, and rent said premises until and including the 24th day of April, 1876, a period of more than twenty years; and after your petitioner had used and rented said improvements for over
260 — years they became old and dilapidated and were insufficient to meet the demands of a growing town and of the large number of visitors that annually came to the Hot Springs for their health, and your petitioner, desiring to aid in meeting that demand, on the 5th day of November, 1874, leased the following ground to Fife and Houston, to wit: Commencing at a point N. 27° 25′ E. of sec. cor. post for secs. 32 & 33, T. 2 south, & sects. 4 & 5, T. 3 S., all in range 19 west and distant therefrom 446 ft., thence bearing N. 84° 30′ E. 82 feet; thence N. 5° 30′ west 29 feet to point of commencement, lying and being in the S. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of sec. 33, T. 2 S., range 19 west, all the above bearings being read from the magnetic meridian (said lease was afterwards assigned to R. E. Allen), with the privilege of erecting new and more commodious buildings thereon; and all the parties to said lease cove-
261 nanted and agreed that said Fife & Houston might remove said new buildings within thirty days after the lease expired, provided the rents were fully paid; but it was expressly covenanted and agreed that no buildings should be removed unless the rent was all paid, and that the same were to be removed within thirty days after the expiration of the lease—that is to say, all buildings erected by Fife and Houston and — assigns were to be the property of William H. Gaines unless all rents were fully paid and unless the buildings were removed within thirty days after the expiration of the lease.

Your petitioner avers that the rents upon said lease have not all been paid; that there was due on the — day of April, 1876, the sum of $65.85 (sixty-five $\frac{85}{100}$ dollars), which rents still remains due and unpaid; and your petitioner avers that said lease, by
262 its own terms, long since expired, and that said Fife & Houston and their assigns have wholly failed both to pay said rent and to remove said buildings within thirty days after the expiration of the lease; and your petitioner expressly avers that in consequence of said failure to pay said rent and remove said buildings as aforesaid that said buildings and improvements thus erected became and are the property of your petitioner, Wm. H. Gaines, both by the agreement of the parties and by the law of the land;


No. 305.
Allen
vs.
Samuelson
Fo. 266
Heir o mim o cus
S 87° E 102
R. E. Allen
N 87° W 102
P. J. Dugan
Main Street
N 8½ E 324 ft.
N
W
E
S
Pt S.W.S.W. Sec 33 T. 2 S. R. 19 W.
Scale - 50 ft to 1 inch
Smith Servin Surveyors
266

that the said improvements were made previous to the 24th day of April, 1876, and are worth the sum of seven hundred dollars.

Your petitioner is informed that one R. E. Allen is setting up some pretended claim thereto, which claim is wholly unfounded in law and equity and is contrary to good conscience. Said Allen never occupied or claimed said premises in his own right previous to April 25, 1876. A copy of the lease is hereto attached and marked Exhibit 31 and prayed to be taken as part hereof.

263 "C." (4-207.) S. W. S.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *June* 28, 1884.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed copy of petition No. 819 before the Hot Springs Commission, testimony submitted in support of the same, and the finding of the commission are true and literal exemplifications of the originals on file and on record in this office.

In testimony whereof I have hereunto subscribed my
[SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

N. C. McFARLAND,
Commissioner of General Land Office.

264 UNITED STATES OF AMERICA:

Hot Springs Commission.

HOT SPRINGS, ARKANSAS, *October 22nd, A. D.* 1877.

In the Matter of the Claim of RICHARD E. ALLEN.

To the Hot Springs commissioners:

The petitioner, Richard E. Allen, now residing at the city of Hot Springs, in the State of Arkansas, represents that he claims the following-described tract of land, a map of which is filed herewith and made a part hereof,

(Here follows diagram marked p. 266)

situated in the Hot Springs reservation, which tract is bounded as follows, to wit: By a line commencing at a point 442 feet north 37° 15′ east from the southwest corner of section 33, T. 2 S., R. 19 W., thence north 3° east along the east side of Valley street, in the city of Hot Springs, 32 feet to the southwest corner of Heironimon's claim; thence south 87° east along the south side of said Heironimon's claim 102 feet to the center of Hot Springs creek;
265 thence south 3° west down the center of said creek 32 feet; thence north 87° west along the north side of P. J. Dugan's claim 102 feet to the place of beginning.

That the following-described improvements are situated thereon, to wit:

A two-story box storehouse 29 x 35 feet; that it was erected by petitioner in the month of March, in the year 1875; that it is of the value of three thousand dollars.

The petitioner further says that he claims to be the owner of the said premises and entitled to purchase the same from the United States upon the following grounds, to wit:

That on the 19th day of February, 1875, A. J. Fife, who was in possession of said tract and had and owned a small house thereon, sold and transferred the same to petitioner and R. Gregory for $150.00 and put them in possession; that on the 19th day of
267 April, 1875, the said Gregory sold and transferred to the petitioner his interest and possession in and to said small house and land, and that petitioner thereafter, in the month of May, 1875, erected on said tract the said two-story box storehouse, of which he was owner and in possession on and prior to the 24th day of April, 1876, and of which he is still the owner and in possession; that after the receiver, A. O. Morgan, took possession of the Hot Springs reservation the petitioner rented the said tract from him and paid him rent therefor.

Petitioner is informed that William H. Gaines is setting up a pretended claim to said tract on the ground that R. A. Houston and A. J. Fife, prior to the erection of said house by the petitioner, rented said lot from him; but petitioner avers that said claim is unfounded in law and unjust; that the said Fife was the owner of said small house when petitioner bought from him; that he
268 purchased with the knowledge and consent of said Gaines; that if said Gaines ever did have any improvement on said tract he sold the same absolutely to said Fife, and that he never expended any money, time, or labor in improving said tract, and that a certificate—for the S. W. ¼ of sec. 33, T. 2 S., R. 19 W.—of entry, wrongfully and fraudulently obtained by the said Gaines in the name of his wife and the heirs of Ludovicus Belding, was the only color of letter or right he or they ever had.

The petitioner files herewith copies of the documents hereinbefore referred to and makes them a part hereof.

Wherefore he prays that the commissioners shall adjudge to him the right to purchase the said premises from the United States, and for other proper relief.

RICHARD E. ALLEN.
MURPHY AND WOOD,
Att'ys for Petitioner.

269 L. 367. No. 819. Hot Springs Commission. Petition of Richard E. Allen. Filed October 27, 1877. J. W. Anderson, cl'k H. S. Com. Examined February 15, 1878. Record B. 2, p. 103. Adjudicated October 8, 1879. Murphy and Wood, att'ys for petitioner.

This agreement of lease, made this 5th day of November, 1874, between William H. Gaines, as lessor, and A. J. Fife and R. A. Houston, as lessees, witnesseth:

That the lessor, for and in consideration of the covenants hereinafter agreed to be performed by the lessees, has leased and remised to the lessees a certain lot or parcel of land lying and being in *situated in* Garland county, in the State of Arkansas, and described as follows, to wit: Beginning at the northwest corner of the saloon and bowling alley of Stricklond and Lamargue, on the east side of the street, in the south end of Hot Springs valley, runs thence
270 east, at right angles with the street, to the center of Hot Springs creek; thence north, parallel with the street, thirty feet; thence west, parallel with the first line, to the street; thence south thirty feet to the place of beginning; to have and to hold the said lot unto the lessees for a term of one year from the date hereof, to be renewed from year to year, at the election of the lessees, until the title to the Hot Springs quarter section of land is settled, for the annual rent of three hundred dollars; and the lessees covenant and agree to pay to the lessor or his legal representatives the said rent of three hundred dollars per annum in installments of seventy-five dollars each on the 5th days of each November, February, May, and August during the continuance hereof; and it is agreed that any and all buildings which the lessees may erect on said lot during the continuance hereof may be re-
271 moved therefrom by the lessees at any time within thirty days after the expiration hereof, provided, however, that the lessor shall have a lien on all such buildings to secure the payment of the rent hereinabove provided for; and no such buildings shall be removed from said lot by the lessees while any part of said rent shall remain due and unpaid; and it is further agreed that if the lessees shall make default and be in arrears with said rent or any part thereof for fifteen days at any one time the lessor may enter upon the premises, eject the lessees therefrom, and repossess himself of the same without notice or other legal process.

This lease shall not be assigned nor the premises underlet without the written consent of the lessor being first endorsed hereon.

Witness the hands and seals of the parties, at Hot Springs, this 5th day of November, 1874.

272 WILLIAM H. GAINES.
A. J. FIFE.
R. A. HOUSTON.

Witness:
A. CURL.
J. D. MURPHNER.

Know all men by these presents that the within and foregoing lease is this day transferred by mutual consent from R. A. Houston to A. J. Fife; and the said A. J. Fife covenants and agrees to assume all the liabilities therein contained and to pay the rent therein specified at the time and in the manner therein stated and agreed upon.

Witness our hands and seals this 12th day of January, A. D. 1875.

WILLIAM H. GAINES,
Per R. G. DAVIES, *Att'y.*
A. J. FIFE.
R. A. HOUSTON.

Know all men by these presents that the within and fore-
273 going lease is this day transferred by mutual consent from A. J. Fife to Richard E. Allen & R. Gregory, Wm. H. Gaines consenting thereto; and the said Allen & Gregory covenant — agree to assume all liabilities which may hereafter accrue under the within lease and to pay the rent as therein specified, and the said Gaines covenants that the said premises are free from any incumbrances on account of said lease up to date.

Witness our hands and seals this 19th day of February, A. D. 1875.

WILLIAM H. GAINES,
Per R. G. DAVIES.
R. E. ALLEN.
R. GREGORY.
A. J. FIFE.

Know all men by these presents—for and in consideration of two hundred and twenty-three dollars to me in hand paid, the
274 receipt of which is hereby acknowledged, being the amount paid out by Robert Gregory—that the within and foregoing lease is this day transferred, and all the improvements on the ground, by mutual consent from Robert Gregory to Richard E. Allen, William H. Gaines consenting thereto; and the said Allen covenants and agrees to assume all liabilities which may hereafter accrue under the within lease and to pay the rent as therein specified.

Hot Springs, Arkansas, this the 19th April, 1875.

ROBERT GREGORY.
RICHARD E. ALLEN.

Attest: W. J. WILLOUGHBY.
PHIL. J. SABIN.

HOT SPRINGS, ARKANSAS, *April 19th*, '75.

I, William H. Gaines, consent to the transfer of lease from Robert Gregory to Richard E. Allen.

WM. H. GAINES.

Received the within thirty dollars this 5th day of November, 1874.

WILLIAM H. GAINES,
Per CURL.

275 819. Given in testimony in claim of R. E. Allen, No. 819, before the Hot Springs Commission.

This indenture, made and entered into on the second day of October, in the year eighteen hundred and seventy-six, by Albert O. Morgan, receiver of the Hot Springs property appointed by the Court of Claims under the authority of the fifth section of the "Act in relation to the Hot Springs reservation, in Arkansas," passed in the year 1870, party of the first part, and *of* R. E. Allen, of Hot Springs, in the county of Garland, State of Arkansas, party of the second part, witnesseth:

That in consideration of the rent hereinafter reserved and the stipulations hereinafter contained the said party of the first part, under the authority of said act and said court and on behalf of the United States, does hereby grant, demise, and to farm-let
276 unto said party of the second part a certain piece or parcel of land situated within the said Hot Springs reservation and described as follows, to wit:

Commencing at a point north 27° 25′ east of section corner-post for sections thirty-two and thirty-three, township two south, and sections four and five, township three south, all in range nineteen west and distant from said post four hundred and forty-six feet, thence bearing north 84° 30′ east eighty-two feet; thence south 5° 30′ *30 ft.* east twenty-nine feet; thence south 84° 30′ west eighty-two feet; thence north 5° 30′ west twenty-nine feet to point of commencement, lying and being in the southwest quarter of the southwest quarter of section thirty-three, township two south, range nineteen west, all the above bearings being read from the magnetic meridian:

To have and to hold the same, with all the rights, privileges,
277 and appurtenances thereunto belonging, unto the said party of the second part, his heirs, executors, administrators, and assigns, for and during the term of one year, commencing on the second day of October, 1876, and fully to be completed and ended, the said party of the second part yielding and paying to the said party of the first part or his successor, as receiver, as rent for the same the sum of two hundred and sixty-four dollars for the term aforesaid, payable in equal monthly installments of twenty-two dollars each, in advance, on the first day of each month of said term, at the office of said receiver, in Hot Springs aforesaid.

And in consideration of the foregoing demise it is covenanted and agreed between the parties as follows:

The party of the second part shall not do or permit any
278 waste of the demised premises during the term aforesaid or during any additional time after the close of said term that the said party of the second part may remain in possession of the premises.

2. At the expiration of said term the possession of the premises shall be delivered to the party of the first part or his successor, as receiver, or to any other agent or representative of the United States who may by law become entitled to receive such possession.

3. If the party of the second part shall fail at any time to pay the rent aforesaid or to perform and fulfill any of the stipulations herein entered into on his part or shall attempt in any respect to resist or obstruct or shall aid, incite, or counsel others to resist or obstruct the authority of the party of the first part as receiver or that of his successor in office, then in any such case the party of the first part or his successor may, at his own will and without demand
279 upon or notice to the party of the second part or to any one occupying the premises, enter into and upon the premises, without taking any legal proceedings to that end, and summarily and, if necessary, forcibly eject and expel from the premises the

party of the second part and all other occupants thereof and take full possession of the premises in behalf of the United States, without being held guilty of trespass and without prejudice to any other remedies available to him or to the United States in such case either at law or in equity.

There are upon the demised premises the following improvements, to wit: A two-story building, 29 feet x 82 feet, used for dwelling and mercantile purposes.

If during the said term the said building should be destroyed by the act of God or by fire, not due to the fault of the lessee, or should in either of said ways be so damaged as to be unfit
280 for habitation, then and in such case, if desired by the lessee, this lease shall be terminated; but if not so desired it shall remain in force as to the land, and a proportionate rent for the land shall be paid, which proportionate rent shall be fixed by the party of the first part or his successor in office.

5. If, at the expiration of the term aforesaid, the party of the second part should desire a renewal of this lease for a period not exceeding one year, the same may be so renewed by endorsement by the receiver upon this lease.

6. No assignment of this lease nor any subletting of the demised premises shall be valid unless the consent of the party of the first part or his successor as receiver shall first have been obtained in writing.

7. The party of the first part or his successor as receiver
281 may, at all reasonable times, enter into and upon the demised premises and any buildings thereon for the purpose of examining the condition thereof.

In witness whereof the said parties have executed this lease in duplicate, signing their names and affixing their seals to each part thereof, the day and year above written.

ALBERT O. MORGAN. [L. S.]
R. E. ALLEN. [L. S.]

Executed in presence of—
WM. HELIN.
GEO. H. WHEELER.

819. Receiver of Hot Springs reservation to R. E. Allen. Lease. Expires October 1st, 1877. Given in testimony in claim of R. E. Allen, No. 819, before the Hot Springs Commission. A. H. Cragin, ch.

Before Hot Springs Commission.

In Claim of RICHARD E. ALLEN, No. 819, Consolidated with No. 784.

Brief for Alien.

282 The petitioner, Richard E. Allen, acquired the possession of the land claimed in his petition in February, 1875, by a purchase from A. J. Fife, in which one Gregory was interested. In April of same year Gregory sold his interest to the petitioner. Said Fife and R. A. Houston had, on the 5th day of November, 1874,

accepted from William H. Gaines a lease for the land only for the term of one year, with covenants of renewal from year to year until the "title should be settled," and said Houston had, with the consent of said Gaines, sold his interest and possession to said Fife.

It was stipulated that the said Fife and Houston should have the right to remove the improvements within thirty days after expiration of term, and the sale by Fife to Allen and Gregory was of the improvements on the land, and was made with the consent of Gaines. (See testimony of R. E. Allen and R. G. Davies, who
283 acted as agent for Gaines.)

The sale by Gregory to Allen was of his interest in the improvements, and was made with the express consent of Gaines. (See endorsement and transfer of lease.) Gaines never pretended to rent any improvements or to claim any, but only the ground.

Petitioner, in the spring of 1875, built a two-story frame house, 29 x 35 feet, worth $1,800, upon the land, which he has occupied ever since the purchase from Fife.

All the improvements belong to petitioner, and he, we respectfully submit, is entitled to the preference right to purchase.

MURPHY & WOOD.

No. 819. Claim of Richard E. Allen. Brief for Allen. Filed May 29th, 1879.

284 In the Matter of the Claim of RICHARD E. ALLEN, No. 819, Consolidated Heretofore with 784, Claim of Gaines *et al.*, and Sundry Others.

SATURDAY, *Feb'y 16th*, '78.

Forenoon Session.

RICHARD E. ALLEN sworn & examined.

Questions by claimant's attorney, Mr. MURPHY:

1st Q. State your name, age, and residence.

A. Richard E. Allen; age, 62; Hot Springs.

2nd Q. Do you know the property described in your petition, No. 819?

A. Yes.

3rd Q. When did you first see it?

A. In 1874.

4th Q. When did you acquire your claim to it?

A. February, 1875.

5th Q. From whom?

A. A. J. Fife.

6th Q. What improvements were on it at that time?

A. Two small houses.

285 7th Q. Who was in possession of them?

A. Mr. Fife.

8th Q. How did you get it from Mr. Fife?

A. I and Dr. Gregory bought them from Mr. Fife for $150.

9th —. Did you get a deed?

A. No, sir.

10th Q. Did you take possession under that purchase?

A. I did; the next day.

11th Q. Who was in possession at the time?

A. A. J. Fife.

12th Q. What improvements are on the land now?

A. I built a house in front there 29 feet wide and 35 feet deep and two stories high. The other houses are in the rear of it.

13th Q. When did you build it?

A. I commenced in the spring of 1875, and completed all except papering that same spring. I have papered some since.

14th Q. What is that house worth—the one you constructed?

286 A. About $1,800.

15th Q. Who is in possession of it now?

A. Mr. Colton is in one of the lower rooms and Dr. Howell occupies part of it.

16th Q. You are not in possession of it now?

A. Only by renting it. Other parties are renting it from me.

17th Q. What are those small houses that you bought from Fife worth?

A. I suppose they are worth $300. I put up a chimney to one of them.

18th —. What became of Dr. Gregory's interest?

A. I bought it on the 19th April, 1875, for $223.

19th Q. Who has been in possession since you bought from Fife?

A. I have.

20th —. Did you take a lease from the receiver?

A. Yes, sir.

21st Q. How much money did you pay him?

A. $25 a month at first, but after awhile he reduced it.

287 22nd Q. Have you the lease?

A. Yes, sir.

Witness produced lease from A. O. Morgan, receiver, to claimant, dated October 2nd, 1876, which was introduced in evidence and is herewith.

23rd Q. Are you behind any in your rent?

A. A little; not much.

Cross-examined by Mr. BENJAMIN, in behalf of William H. Gaines *et al.*:

24th Q. From whom did you rent the ground?

A. From Major Gaines. Fife and Houston had a lease from him, which was transferred to me.

25th Q. Is there a balance due Major Gaines for rent?

A. Yes.

26th Q. Is this the lease, with the assignment thereon to you? (Shown him.)

A. Yes.

Said lease was introduced in evidence, being a lease from
288 William H. Gaines to Fife and Houston, dated November 5th, 1874, and transferred by endorsement to claimant, and the same is herewith.

27th Q. Did you know Houston, who was interested in that house before?

A. Yes; he had sold to Mr. Fife.

ROBERT G. DAVIES sworn and examined.

Questions by Mr. MURPHY, in behalf of R. E. Allen:

1st Q. State your name, age, and residence.

A. Answer. Robert G. Davies; age, 26; Hot Springs.

2nd Q. Do you know the property that Mr. Allen has been talking about?

A. Yes, sir.

3rd Q. Do you know how he acquired it?

A. Yes; he bought it from Fife and Houston.

4th Q. Do you know when he bought it?

A. The date of the transfer on the lease is the time he bought it. I made that transfer for Major Gaines.

5th Q. Do you know what improvements are on the land now?

289 A. There is a two-story building on it.

6th Q. What is its value?

A. I judge it cost in the neighborhood of $1,800.

7th Q. Were you an agent of Major Gaines at the time of the transfer from Fife to Allen?

A. Yes, sir.

8th Q. What was it that was sold by Fife to Mr. Allen?

A. The lease and the buildings, as I understood it at the time. I collected ground rent only, and the lease is only a lease of the ground. I had no claim as agent for Major Gaines on this house.

Cross-examined by Mr. BENJAMIN, in behalf of Gaines claimants:

9th Q. You do not know whether that was taken into consideration in fixing the amount of ground rent, making the ground rent more or not, do you?

A. I think he paid the same ground rent.

290 GEORGE HOLCOMBE sworn & examined.

Questions by Mr. MURPHY, attorney for claimant Allens:

1st Q. State your name, age, and residence.

A. George Holcombe; age, 30; Hot Springs.

2nd Q. Do you know the property about which Mr. Allen and Mr. Davies have testified?

A. Yes, sir.

3rd Q. How long have you known it?

A. Ever since Mr. Allen purchased it.
4th Q. What improvements are on it?
A. There is a two-story building on it in front, and those two old buildings in the rear of it.
5th Q. When was the two-story house built?
A. In the spring of 1875.
6th Q. Are you a carpenter?
A. Yes, sir.
7th Q. What was it worth?
A. $1,500 or $1,800.

And further the witness saith not.

291 No. 819. Claim of Richard E. Allen. Testimony of Richard E. Allen, Robert G. Davies, George Holcombe, given before the Hot Springs Commission. A. H. Cragin, ch.

WEDNESDAY, *October 8th*, 1879.

In the Claim of RICHARD E. ALLEN. No. 819.

At this time comes the petitioner, Richard E. Allen, and the commission, having heard and considered the petition and testimony, as also the testimony in claim No. 784, William H. Gaines and Maria Gaines, do say and find that the claim of the petitioner accrued prior to the twenty-fourth day of April, A. D. 1876, by reason of the use, occupation, and improvement of the premises described in the petition, and that the petitioner is the owner
292 and entitled to the possession of the improvements thereon.

And the commission, having had the premises surveyed, and having inspected and caused the same to be platted, numbered, and scheduled, and having appraised the same as provided by law, and being sufficiently advised of the premises, do further say and find that the petitioner is entitled to purchase from the United States the following-described land, in Hot Springs, to wit, lot numbered five, in block numbered one hundred and twenty-nine, for the sum of eight hundred dollars, that being the appraised value thereof.

It is ordered, therefore, and adjudged that the said Richard E. Allen is entitled to purchase said lot numbered five, in block numbered one hundred and twenty-nine, for said sum of eight hundred dollars, and that a certificate be issued to him for the right to purchase the same, containing 2,880 feet.

293 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 24th day of October, anno Domini one thousand eight hundred and eighty-seven, at the United States courtroom, in the city of Little Rock, Arkansas, the Honorable David

J. Brewer, circuit judge 8th judicial circuit, *judge* presiding and holding said court, the following proceedings were had, to wit:

On November 11, 1887:

Decree.

Now, on this day, come the said plaintiffs, by their solicitors, M. W. Benjamin and R. G. Davies, and also comes the said defendant, R. E. Allen, by G. W. Murphy, Esq., his solicitor, and the special master having heretofore filed his report herein, and this case now coming on for hearing, and the court having heard the argument of counsel and being now sufficiently advised as to the further decree to render herein—

294 It is ordered, adjudged, and decreed that all of the exceptions of the defendant to the master's report be, and the same are, overruled; and thereupon the court finds and states the amount between the plaintiffs and defendant as follows: To amount due said plaintiff for rent according to the terms of the lease from the date of award to the date of the filing of the bill in this case and interest, fifteen hundred and forty-eight dollars and twenty-two cents; to amount due him since said date and until the filing of the master's report rental value of the property and interest, twelve hundred and eighty-seven dollars and sixty-six cents; to amount of rent to date of this decree, four hundred and sixty-six dollars and sixty-two cents, amounting in the aggregate to the sum of three thousand three hundred and two dollars; by amount due the defendant for taxes paid and interest, seven hundred and ten dollars and fifty-two cents; by amount of purchase-money paid —

295 him to Government for said lot and interest, four hundred and twenty-two dollars and forty cents; by present value of the improvements, four thousand —, which said sums amount in the aggregate to five thousand one hundred and thirty-two dollars and ninety-two cents, from which take three thousand three hundred and two dollars, as above, leaves the sum of one thousand eight hundred and thirty dollars and ninety-two cents, which the court finds to be the balance now due defendant, *which*, if not paid in ninety days either upon any *bona fide* mortgage upon said property or into the court, that an order of sale shall be issued to Ed. Hogaboom, as special master, who shall sell said property at public auction on a credit of six months, with good security, after advertisement for twenty days in some newspaper in Hot Springs, Arkansas, and out of proceeds pay off said eighteen hundred

296 and thirty dollars and ninety-two cents, less costs, and balance pay over to plaintiffs.

It is therefore ordered, adjudged, and decreed that the said defendant do have and recover from said plaintiffs said amount of eighteen hundred and thirty dollars and ninety-two cents, less all costs of this suit, and that he have execution therefor; and it is further ordered and decreed that said plaintiffs do have and recover from said defendant the possession of said lot five, in block one hundred and twenty-nine, of the Hot Springs reservation, Garland

county, Arkansas, and that a writ of possession issue, and serving a copy of this decree shall be the writ.

It is further ordered that N. W. Cox be allowed the sum of one hundred dollars for his services as special master herein; and the defendant prays an appeal to the Supreme Court, which is granted; and it is ordered that upon his executing and filing a bond
297 within the time and conditioned as prescribed by law in the sum of four thousand dollars and a cost bond for two hundred and fifty dollars, with good approved security, the decree be superseded pending said appeal.

And on February 7th, 1888, the following proceedings were had, to wit:

Comes the defendant, R. E. Allen, and files herein his cost bond in the sum of two hundred and fifty dollars, with B. L. Hudgins as surety, which is filed and ordered by the court to be approved; which cost bond is in words and figures following, to wit:

Know all men by these presents that we, R. E. Allen and Bev. L. Hudgins, of Hot Springs, Garland county, Arkansas, are held and bound unto Wm. H. Gaines and Maria Gaines in the sum of two hundred and fifty dollars; to the payment of which we bind
298 ourselves and each of us, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 28th day of January, 1888.

Whereas an appeal has been prayed and granted to the above-named R. E. Allen from the decree rendered by this the above-entitled court in the above-entitled suit to the Supreme Court of the United States: Therefore if the said R. E. Allen shall prosecute his appeal to a decision and answer all costs if he fails to make good his appeal, then this obligation shall be void; otherwise to remain in full force.

RICHARD E. ALLEN. [SEAL.]
BEV. L. HUDGINS. [SEAL.]

Bev. L. Hudgins states that he is a resident of the State of Arkansas; that he is worth the sum of two hundred and fifty dollars beyond the amount of his debts, liabilities, and exemptions, and he has property in said State subject to execution of the value
299 of two hundred and fifty dollars.

BEV. L. HUDGINS.

Subscribed and sworn to before me this 28 day of January, 1888.
[SEAL.] JNO. W. COYLE,
Notary Public.

Endorsed: Filed and approved by order of court Feb'y 7, 1888. Ralph L. Goodrich, clerk.

300 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit,

hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the original remaining of record in my office.

In witness whereof I have hereunto set my hand and the seal of said court this 1st day of October, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States of America the one hundred and thirteenth.

The Seal of the Circuit Court, Western Division of East. Dist. Ark., U. S. A.

Attest:

RALPH L. GOODRICH, *Clerk*,
By W. P. FEILD, *D. C.*

Endorsed on cover: Case No. 13,458. E. Arkansas C. C. U. S. No. 305. R. E. Allen, appellant, *vs.* William H. Gaines and Maria Gaines. Filed January 2, 1889.